United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

B P/S

74-1294 ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

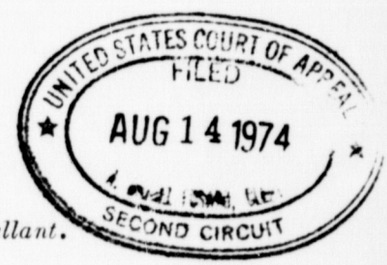
UNITED STATES OF AMERICA,

Appellee,

vs.

ANCORP NATIONAL SERVICES, INC.,

Appellant.



On Appeal from Judgment of the United States District Court for the Southern District of New York.

APPELLANT'S APPENDIX

Volume I, pp. 1a - 266a

SAXE, BACON, BOLAN & MANLEY
Attorneys for Appellant
39 East 68th Street
New York, New York 10021
(212) 472-1400

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DOCKET ENTRIES

CIVIL DOCKET

~~JUDGE FONSA~~ JUDGE TYLER

~~JUDGE BONSAL~~

D. C. Form No. 106 Rev. JUDGE BONSAL

TITLE OF CASE	ATTORNEYS
UNITED STATES OF AMERICA VS. ANCORP NATIONAL SERVICES, INC.	For plaintiff: WHITNEY NORTH SEYMOUR JR. U.S. ATTORNEY BY Gerald A. Rosenberg. & Foley Square, Naomi. L. Reice. N.Y.C.N.Y. 10007 For defendant: Eugene Frederick Roth 230 Park Ave. NY 10017 MU 6-8030

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		1/16/74	Roth	15	
J.S. 6 mailed ✓	Marshal		1/16/74	Sayer		10
Basis of Action: TO RECOVER CIVIL PENALTIES PURSUANT TO FEDERAL TRADE COMM. ACT.	Docket fee		1/15/74	Rec'd		
	Witness fees					
Action arose at:	Depositions					

U.S.A. VS. ANCORP NATIONAL SERVICES, INC.

JUDGE BONSAL

JUDGE TYLER

70 CIV 3 0

DATE	PROCEEDINGS	Date Order Judgment: N
Dec31-70	Filed Complaint. Issued Summons.	
Dec31-70	Filed Notice of Assignment.	
eb.2-71	Filed summons with marshal's return. Served Joseph P. Kiernan on 1/20/71.	
eb.25-71	Filed ANSWER to complaint.	EFR
r.19-71	Filed AMENDED ANSWER to complaint.	"
un 23-71	Filed Notice to take Deposition of deft. Ancorp. National Services, Inc. by Henry Garfinkle.	
n 23-71	Filed Notice to take Deposition of deft. Ancorp National Services, Inc. by William A. McCollough.	
.30-71	Filed Affdvt. of Alan B. Morrison, for pltff. based upon fifes and other information, etc.	
.30-71	Filed deft's brief on motion to dismiss or stay.	
.30-71	Filed Memorandum of law by pltff.	
.30-71	Filed deft's affdvt. and notice of motion to dismiss complaint.	
.30-71	Filed Memo Endorsed on motion filed this date--This motion is denied in all respects for the reasons set forth in my memorandum dictated to the court reporter today at the conclusion of argument, etc. It is so Ordered. Tyler,J. M/N	
g.10-71	Filed Notice to take Depositions of Ivan Veit, Nathan W.Goldstein.	
.10-71	Filed Notice to take Deposition of Byron S. Greenberg.	
.10-71	Filed Notice to take Deposition of the plaintiff.	
.10-71	Filed Notice to take Deposition of Jack E. Underwood.	
5 71	Filed Transcript of the record of proceedings dated 7-30-71.	
15 71	Filed Pltff's Interrogs & request for documents.	
3 71	Filed Deft's notice of taking the deposition of Louis M Loeb on Dec 22 1971.	
4-72	Filed defts' notice to take deposition upon oral examination	
17 72	Filed Pltff's notice to take depostion of Morris Strassman on Apr 18 1972.	
17 72	Filed Deft's AMended Answers to interrogs.	
6 72	Filed Pltff's notice to take deposition of deft Ancorp National Services Inc. by Vincent Mineo on July 10 1972.	
28 72	Filed Pltff's notice to take deposition of Deft Ancorp National Services Inc. by any agent, etc. on Jul 11 1972.	
.12-72	Filed deft's Interrogs. and Request For Documents	
.19-72	Filed plaintiff's answer to defendant's interrogatories	
5-72	Filed Stip and Order that the time for parties to file their Pre-Trial Order is is extended from 12-1-72 to 12-15-72. BONSAL,J.	
12.73	Filed Pre Trial Order by Pltff. Bonsal J.	
1-73	Filed Notice to take Deposition of Roy Newborn.	
22,73	Filed notice of designation of U.S. atty. GERALD A. ROSENBERG and NAOMI L. REICE.	
y 3.73	Filed Gov't.'s Trial Memorandum.	
,73	Filed Defts. Trial Brief.	
5,73	Filed second amended answer.	EFR
9-73	Non-jury trial begun before Judge Bonsal	
10-73	Trial cont'd.	
11-73	Trial cont'd.	
12-73	Trial cont'd.	
19-73	Trial cont'd and concluded. Decision reserved. Bonsal,J.	
12-73	Filed Govt's Post-Trial Brief:Civil Penalties&Injunctive Relief for Violation of Federal Trade Commission Order.	
0 23 73	Filed transcript of record of proceedings, dated 7/7-12/73	
p 28 73	Filed transcript of record of proceedings, dated	

Cont'd on page #3

AMOUNT

Nov.30-73 Filed OPINION #40073: The United States is entitled t a judgment against the deft. in the amount of $204.200 &' costs. In addition, a permanent injunction will be issued, enjoining deft. from further violations of the FTC order. The foregoing constitutes the court's findings of fact &' conclusions of law. Settle Judgment on notice. Bonsal,J. m/n

Dec.18-73 Filed Judgment #73,996: ADJUDGED that pltff. U.S.A. have judgment against the deft. for the total amount of $205,630.66. Deft. its officers,employees are permanently, enjoined from violating the Federal Trade commission order, etc. Bonsal,J. Judg. Ent. Clerk. m/n Ent.12-21-73.

Dec.19-73 Filed Bill of costs on Judgment #73,996 in the sum of $1,430,66

Jan.16-74 Filed deft's notice of appeal from final judgment of Bonsal,J. , entered on 12-18-73. Mailed copy to U.S. Attorney.

Jan.16-74 Filed deft-Appellant's notice of appeal from the judgment ent. on 12-18-73. Mailed copies to U.S.Atty. & Ancorp National, Services, Inc.

Feb 8,74 Filed Deft's Post Trial Memorandum.

Feb.14-74 Filed notice that record on appeal has been certified & transmitted to the U.S.C.A. on 2-14-74.

USA-33a-304 SUMMONS

SUMMONS
(Filed December 31, 1970) 4a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA, : SUMMONS

Plaintiff, : Civil Action

-v- : 70 Civ. 5770 HRT

:

:

ARCORP NATIONAL SERVICES, INC., :

:

Defendant. :

- -x

TO THE ABOVE-NAMED DEFENDANT :

You are hereby summoned and required to serve upon Whitney North Seymour, Jr., United States Attorney for the Southern District of New York, plaintiff's attorney whose address is United States Court House, Foley Square, New York, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JOHN LIVINGSTON

Clerk of Court

Deputy Clerk

(Seal of the U.S. District Court)

Dated: December 31, 1970

(This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure)

COMPLAINT
(Filed December 31, 1970) 5a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

U.S. DISTRICT COURT
FILED 12-31-70

UNITED STATES OF AMERICA, :

Plaintiff, :

COMPLAINT

v. : 70 Civ. 5770 HRT

ANCORP NATIONAL SERVICES, INC., :

Defendant. :

- -x

The United States of America brings this action under 28 U.S.C. §§ 1337, 1345 and 1355, at the direction of the Attorney General of the United States acting upon the Federal Trade Commission's certification of facts as to violations of a cease and desist order, to recover civil penalties pursuant to Section 5(1) of the Federal Trade Commission Act as amended [15 U.S.C. § 45(1)] and to secure injunctive relief pursuant to equity and Section 9 of said Act [15 U.S.C. § 49].

COUNT ONE

1. Defendant Ancorp National Services, Inc., is a corporation organized and existing under the laws of the State of Delaware. On May 1, 1969, defendant changed its corporate name from "The American News Company" to its present name. Defendant transacts business and is found within the Southern District of New York, its principal

place of business being located at 131 Varick Street, New York, New York. Defendant is a diversified company engaged directly, and indirectly through subsidiary and affiliate companies, in operating newsstands, restaurants, vending, and food concessions; in wholesaling books, stationery, and tobacco; and in manufacturing book matches. In 1968, defendant's sales totaled $168 million.

2. Defendant, with more than 500 newsstands, is one of the largest operators of newsstands in the United States, and is engaged in commerce, as commerce is defined in Section 4 of the said Federal Trade Commission Act, in the distribution and sale by or through such newsstands of newspapers, magazines, paperback books, cigarettes, candy, and other products. Some of defendant's newsstands trade or do business under the name "Union News Company". About 285 of defendant's newsstands, having total sales in 1968 of over $17 million, are at locations in the New York Metropolitan Area. Included in these locations are railroad, airport, bus, and subway terminals.

3. In a proceeding charging The American News Company (as defendant was known prior to its change of name on May 1, 1969) and another with violating Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), the Federal Trade Commission issued an order to cease and desist which, as modified and affirmed upon judicial review, 300 F.2d 104

(2d Cir. 1962), became final by operation of law on May 13, 1964, and has been in effect at all times material herein. Included in said order, a copy of which is attached hereto and made a part hereof as Exhibit A, is the following language:

> IT IS ORDERED, That . . . The American News Company . . . directly or through any corporate or other device, in or in connection with the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of products for resale on newsstands operated by respondents, do forthwith cease and desist from:
>
> Receiving, or inducing and receiving, or contracting for the receipt of, anything of value from any of their suppliers as compensation or in consideration for services or facilities furnished by or through respondents in connection with the processing, handling, sale or offering for sale of products purchased from any of their suppliers, when respondents know or should know that such compensation or consideration is not affirmatively offered or otherwise made available by such suppliers on proportionally equal terms to all of their other customers competing with respondents in the sale and distribution of such suppliers' products.

4. The New York Times Company, hereinafter referred to as Times Company, is a corporation organized and existing under the laws of the State of New York, has its principal place of business at 229 West 43rd Street, New York, New York, and is engaged in the publication, printing, distribution and sale of various publications, including a newspaper known as The New York Times, hereinafter referred to as The Times. In 1968, The Times had a weekday circulation of over 1,060,000 copies and a Sunday circulation of over 1,400,000 copies. The Times is sold by Times

Company, directly and indirectly to defendant and other newsstand operators in New York and other States of the United States, for resale to the public.

5. Beginning some time prior to December 1965 and continuing up to and including February 1969, pursuant to an agreement between defendant and Times Company which resulted from defendant's demand for additional revenue from Times Company, defendant received compensation in the amount of $2,587.20 per month from Times Company in connection with promoting and displaying The Times on certain newsstands operated by defendant in New York and other States of the United States.

6. Defendant knew, or should have known, that compensation of the nature described in the preceding paragraph was not offered or otherwise made available by Times Company on proportionally equal terms to all of the newsstand customers of Times Company who competed with defendant's newsstands; and, therefore, by receiving, or inducing and receiving, or contracting for the receipt of, such compensation, defendant violated the cease and desist order described in paragraph 3 of this complaint.

COUNT TWO

7. Paragraphs 1 through 3 of this complaint are hereby realleged under this Count.

8. The News Syndicate Co., Inc., hereinafter referred to as News Syndicate, is a corporation organized

and existing under the laws of the State of New York, and is a subsidiary of the Tribune Co., a corporation organized and existing under the laws of the State of Illinois. News Syndicate has its principal place of business at 220 East 42nd Street, New York, New York, and is engaged in the publication, distribution and sale of a newspaper known as The Daily News, and hereinafter referred to as The News. In 1968, The News had a weekday circulation of over 2 million copies and a Sunday circulation of about 3 million copies. The News is sold by News Syndicate, directly and indirectly to defendant and other newsstand operators in New York and other States of the United States, for resale to the public.

9. Beginning some time prior to December 1965 and continuing up to and including February 1969, pursuant to an agreement between defendant and News Syndicate which resulted from defendant's demand for additional revenue from News Syndicate, defendant received compensation in the amount of $500.00 per week from News Syndicate in connection with promoting and displaying The News on certain newsstands operated by defendants in New York and other States of the United States.

10. Defendant knew, or should have known, that compensation of the nature described in the preceding paragraph was not offered or otherwise made available by News Syndicate on proportionally equal terms to all of the newsstand customers of News Syndicate who competed with defendant's newsstands; and, therefore, by receiving, or inducing and receiving, or contracting for the receipt of, such compensation, defendant violated the cease and desist

order described in paragraph 3 of this complaint. 10a

COUNT THREE

11. Paragraphs 1 through 3 of this complaint are hereby realleged under this Count.

12. The New York Post Co., Inc., hereinafter referred to as Post Co., is a corporation organized and existing under the laws of the State of New York, has its principal place of business at 75 West Street, New York, New York, and is engaged in the publication, distribution, and sale of a newspaper known as The Post. In 1968, The Post had a weekday circulation of over 650,000 copies and a Saturday circulation of over 360,000 copies. The Post is sold by Post Co. directly and indirectly to defendant and other newsstand operators in New York and other States of the United States, for resale to the public.

13. Beginning some time prior to December 1965 and continuing up to and including February 1969, pursuant to an agreement between defendant and Post Co. which resulted from defendant's demand for additional compensation from Post Co., defendant received compensation in the amount of $50 per month in connection with promoting and displaying The Post on certain newsstands operated by defendant in New York and other States of the United States.

14. Defendant knew, or should have known, that compensation of the nature described in the preceding paragraph was not offered or otherwise made available by

Post Co. on proportionally equal terms to all of the newsstand customers of Post Co. who competed with defendant's newsstands; and, therefore, by receiving, or inducing and receiving, or contracting for the receipt of, such compensation, defendant violated the cease and desist order described in paragraph 3 of this complaint.

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree, for each Count herein, that defendant has violated the cease and desist order described in paragraph 3 of this complaint.

2. That a judgment be entered against defendant in the amount of $385,000.00, based on a civil penalty of $5,000.00 per month per Count for the period December 1965 through February 1969.

3. That plaintiff recover the total costs and disbursements of this action.

4. That defendant be enjoined from doing those acts which are prohibited by the cease and desist order attached hereto as Exhibit A, since defendant has engaged in widespread violations of said order and has shown a lack of purpose to prevent such violations.

5. That plaintiff be given such other and further relief as may be deemed just and proper.

Dated: New York, New York

December 30, 1970.

AMK:mm
76-3009

[redacted]
Acting United States Attorney for the
Southern District of New York,
Attorney for Plaintiff
United States of America.

By: Allan B. Norman
[redacted]
Assistant United States Attorney
Office and Post Office Address:
United States Court House
Foley Square
New York, New York 10007
Telephone No.: 264-6517

EXHIBIT A - FEDERAL TRADE COMMISSION'S MODIFIED CEASE AND DESIST ORDER ANNEXED TO THE FOREGOING COMPLAINT 13a

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Paul Rand Dixon, Chairman
Philip Elman
Everette MacIntyre
John R. Reilly

In the Matter of AMERICAN NEWS COMPANY and THE UNION NEWS COMPANY	DOCKET NO. 7396

MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Second Circuit a petition to review and set aside the order to cease and desist issued herein on January 10, 1961; and the court on February 7, 1962, having filed its decision, and on April 27, 1962, having entered its final decree modifying and as modified, affirming and enforcing said order to cease and desist; and the United States Supreme Court having denied a petition for certiorari filed by respondents;

NOW, THEREFORE, IT IS HEREBY ORDERED that the aforesaid order to cease and desist be, and it hereby is modified, in accordance with the said final decree of the Court of Appeals, to read as follows:

IT IS ORDERED that the respondents, The American News Company and The Union News Company, corporations, their officers, employees, agents or representatives, directly or through any corporate or other device, in or in connection with the purchase

in commerce, as "commerce" is defined in the Federal Trade Commission Act, of products for resale on newsstands operated by respondents, do forthwith cease and desist from: 14a

> Receiving, or inducing and receiving, or contracting for the receipt of, anything of value from any of their suppliers as compensation or in consideration for display or promotional services or facilities furnished by or through respondents in connection with the processing, handling, sale, or offering for sale of products purchased from any of their suppliers, when respondents know or should know that such compensation or consideration is not affirmatively offered or otherwise made available by such suppliers on proportionally equal terms to all their other customers competing with respondents in the sale and distribution of such suppliers' products.

By the Commission.

Joseph W. Shea,
Secretary.

ISSUED: April 13, 1964

ANSWER
(Filed February 25, 1971)

Rec'd by Mr. Thomsen 2/25/71 by mail

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	ANSWER
-against-	:	70 Civ. 5770 HRT
ANCORP NATIONAL SERVICES, INC.,	:	
Defendant.	:	

The defendant, Ancorp National Services, Inc., for its answer by its attorney, Eugene Frederick Roth, Esq.:

FIRST: Admits the allegations of Paragraph 3 of the complaint except that the proceeding before the Federal Trade Commission therein referred to related solely to the purchase and sale of magazines, paper back and comic books, excluding newspapers therefrom, and no charges were issued or findings thereon made at any time by the Federal Trade Commission against the defendant relating to any newspaper publications or with respect to the matters set forth in the complaint.

SECOND: Denies the allegations of Paragraph 5 of the complaint except admits that it received the sums mentioned during the period referred to from the Times Company on account of certain services, expenditures and costs incurred by the defendant in handling Times' publications.

THIRD: Denies the allegations of Paragraphs 6, 10 and 14 of the complaint.

FOURTH: Denies the allegations of Paragraph 9 of the complaint except admits that it received the sums mentioned during the period referred to from the News Syndicate on account of certain services, expenditures and costs incurred by the defendant in handling the News publications.

FIFTH: Denies the allegations of Paragraph 13 of the complaint except admits that it received the sums mentioned during the period referred to from the Post Co. on account of certain services, expenditures and costs incurred by the defendant in handling The Post publications.

For a First Affirmative Defense

SIXTH: The within action to collect penalties is premature having been commenced without due process or prior hearing before the Federal Trade Commission to the prejudice and denial of the defendant's rights.

For a Second Affirmative Defense and in Mitigation

SEVENTH: On information and believe, the Times Company, the News Syndicate and the Post Co., their officers and employees, at the times mentioned in the complaint were, and are, engaged in a combination, plan and agreement to fix and maintain retail prices for their publications when sold on the newsstands in and about the

City of New York contrary to the antitrust laws; and in pursuance of and as part of such illegal combination, plan and agreement, the Times, the News and the Post, their officers and employees, have forced the defendant to expend for the benefit of these publishers various services, expenditures and costs without proper payment therefor to the defendant at the same time precluding the defendant and others from decreasing their retail prices to compensate therefor; and pursuant to such combination, plan and agreement said parties have induced the Federal Trade Commission to refrain from taking any action against them with respect to the payments alleged in the complaint or with respect to their violations of the antitrust laws in fixing prices for the retail sale of their publications.

Dated: New York, NewYork
February 23, 1971

EUGENE FREDERICK ROTH, ESQ.,
Attorney for Defendant,
Ancorp National Services, Inc.
230 Park Avenue
New York, New York 10017
Telephone: (212) 686-8030

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	Index No:
-against-	:	70 Civ. 5770 HNP
ANCORP NATIONAL SERVICES, INC.,	:	
Defendant.	:	

- -

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of William McCollough sworn to July 21, 1971, and the pleadings herein the undersigned will move this court before the Hon. Harold B. Tyler in Room 2704, United States Courthouse, Foley Square, Borough of Manhattan, City of New York, New York on July 30, 1971 at 2:15 P. M. for an order:

(a) dismissing the complaint herein on the ground that the action was prematurely brought in the absence of prior hearing before, and final decision of, the Modified Order to Cease and Desist issued by the Federal Trade Commission on April 13, 1964 upon which the instant action is based; or;

(b) staying this action until after hearing and final determination by the Federal Trade Commission on the charges in the complaint that the defendant failed to comply with the aforesaid cease and desist order;

and for such other and further relief as may be just and proper in the premises. 19a

Dated: New York, New York
July ››, 1971.

Yours, etc.

LUCHE FREDERICK ROTH, ESQ.,
Attorney for Defendant
230 Park Avenue
New York, New York 10017
686-8030

TO: WHITNEY NORTH SEYMOUR, JR.,
United States Attorney for
Southern District of New York
Attorney for Plaintiff
United States Courthouse
Foley Square
New York, New York

AFFIDAVIT OF WILLIAM McCOLLOUGH IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	Index No.:
Plaintiff,	:	70 Civ. 5770 CHT
-against-	:	AFFIDAVIT
ANCORP NATIONAL SERVICES, INC.,	:	
Defendant.	:	

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

WILLIAM McCOLLOUGH, being duly sworn, deposes and says:

1. I am the President of Ancorp National Services, Inc. ("Ancorp"), the defendant in this action which was brought to recover penalties in the amount of $585,000 for alleged failure to comply with a cease and desist order issued by the Federal Trade Commission on April 13, 1964. This motion to dismiss or stay the action is made because:

(a) the defendant was in any event entitled to a prior determination by the Federal Trade Commission after due hearing that there was failure to comply with the cease and desist order in the respects alleged in the complaint, and

(b) the cease and desist order is not to be construed as providing for imposition of penalties for violation thereof with respect to newspapers in the absence of prior hearing and due process before the Federal Trade Commission establishing newspaper violations.

The complaint in this action sets forth the receipt of payments from the publishers of the "New York Times", of the "New York Daily News" and the "New York Post", the three

metropolitan newspapers and alleges that these payments were in violation of the cease and desist order of April 13, 1964. That order was founded only on "magazines, paperback and comic books" and cigars and the hearings and findings of the Commission were limited to these items specifically excluding newspapers which were not the subject of any testimony in the hearings.

2. In February 1959, the Federal Trade Commission issued a complaint against Ancorp as an operator of a chain of newsstands throughout the United States for allegedly inducing the publishers of "magazines, pocket books and comic books" to "make payment or allowances or to contract for payment or allowances" in violation of Subsection (d) of Sec. 2 of the Clayton Act as amended and also for attempting to induce such payment from cigar manufacturers.

Annexed hereto as Exhibit "A" is a copy of that complaint. Paragraph Two of this complaint stated that the defendant (Union News being now merged with the defendant) in its chain of newsstands "sells newspapers, periodicals, books, magazines, stationery, cigars, cigarettes, candies, toys and sundry items". Paragraph Four, however, the operative allegation, specified "magazines, pocket books and comic books". Paragraph Five sets forth the names of particular publishers of these publications who made payments to Ancorp.

The Commission's complaint alleged that Ancorp is the largest operator of retail newsstands in the nation, including locations primarily in railroad stations, bus ter-

minals, airports and office buildings throughout the country, and that the acts complained of were unfair methods of competition under the general provisions of Section 5 of the Federal Trade Commission Act which merely prohibits "unfair methods of competition". 22a

Before that complaint was issued in 1959, the Commission engaged in extensive investigations of the business of Ancorp and its complaint was the final result of exhaustive and detailed inquiries. For a number of years before the issuance of the Commission's complaint, Ancorp was receiving various allowances and payments from "newspaper" publishers similar to those referred to in the complaint in the action before this court, as well as from "magazine, pocket book and comic book" publishers. Notwithstanding this fact, the Commission's complaint failed to make any reference to alleged unfair competitive practices in connection with newspapers although as quoted above from Paragraph Two of the Commission's complaint, it was fully cognizant that "newspapers" were part of the business of Ancorp.

3. It is here pertinent to point out some of the vital differences between the original 1961 Commission complaint and the facts on which the complaint in this action is laid, namely, the business of New York City retail distribution of daily newspapers as compared to the national business of distributing magazines, pocket books and comic books throughout the United States.

(a) Magazines, pocket books and comic books, as the findings of the Commission's Hearing Examiner and the

Commission described, are distributed nationally through a complicated system of "national distributors", "independent national distributors" and "local wholesalers" throughout the country who deliver to local newsstands. There are literally hundreds of magazines vying for limited space on newsstands. They are not distributed daily like newspapers, but monthly or weekly and in the case of pocket books and comic books, they are issued sporadically.

(b) The Commission's original complaint was based on a national chain of newsstands serviced by national and local wholesalers and distributors. The complaint in this action is based on distribution of newspapers in the metropolitan New York City area only. Newspapers are delivered on a daily basis to a large extent directly by the newspaper publishers themselves with their own employees. There are several editions each day. Time of sale (rush hours, nights, holidays, etc.) are highly important in daily newspaper distribution. The newsstand publication business is on a "sale and right of return" basis, namely, unsold copies are returned for credit. The services required in receiving, selling and returning of newspapers are quite different from those involved in the sale of magazines, pocket books and comic books. I will refer below to certain aspects of the special services which Ancorp provided to the newspapers and the unique costs which we incurred for the benefit of the newspapers which far exceeded the openly made payments referred to in the complaint and which we submit were legal in all respects.

4. It appears conclusively that the Commission itself consciously excluded "newspapers" and this was done with full cognizance of the great distinction between magazines, pocket books and comic books on the one hand and the daily newspapers. The hearings were conducted entirely with respect to the country-wide sale of magazines, pocket books, comic books (cigars) by carefully excluding newspapers as a separate field of inquiry not to be confused with the subject matter of the hearings.

After exhaustive hearings the Examiner for the Commission submitted his findings on May 26, 1960 and a copy of these findings are set forth on Exhibit "B" annexed hereto. It is to be noted that these findings are limited (Par.1) to allowances paid by publishers of "magazines, paperback books, pocket books and comic books". In Par. 3 the Examiner found that there were "attempts" to induce preferential payments from tobacco manufacturers. On January 16, 1961, the Commission entered its final order together with its opinion confirming the findings of the Examiner and limiting its detailed findings entirely to the items specified in the Examiner's report. There was no reference to newspapers in the proceedings except in the preliminary description of Ancorp's business in the original complaint of the Commission.

The January 16, 1961 cease and desist order of the Commission was confirmed by the Court of Appeals for the Second Circuit (300 Fed. 2nd 104) with a strong dissenting opinion by Judge Moore.

The court modified the Commission's order by requiring that the payments be made for "display or promotional" services or facilities thus requiring that the payments involve a "display or promotional" consideration which was not contained in the Commission's original order. Thereafter, the Commission entered it's final order (which is the one sought to be enforced in this court) on April 13, 1964.

5. We assert and are prepared to prove, to the full knowledge and agreement of the newspapers, that the services Ancorp provided to the newspapers far exceeded the value of any payment made, that the value of the Ancorp services made comparison with any other local newsstand operation unnecessary because no others could provide such services, that Ancorp acted reasonably in all respects in its inquiries relating to possible discrimination in price or allowances and that Ancorp did, and could, properly rely on the newspapers for representation as to the validity of the payments.

The cease and desist order requires Ancorp to cease and desist from:

> "Receiving, or inducing and receiving, or contracting for the receipt of, anything of value from any of their suppliers as compensation or in consideration for display or promotional services or facilities furnished by or through respondents in connection with the processing, handling, sale or offering for sale of products purchased from any of their suppliers, when respondents know or should know that such compensation or consideration is not affirmatively offered or otherwise made available by such suppliers on proportionately equal terms to all their other customers competing with respondents in the sale and distribution of such suppliers' products". (underlining added)

Among the questions to be considered under the cease and desist order are: 26a

(1) What are the "services or facilities" which Ancorp provided to the newspapers and their cost and value as compared to the payments?. Were they "display or promotional"?

(2) Who are to be deemed "customers competing with Ancorp for the purposes of the order?

(3) What is the effect of the requirement in the order that Ancorp "know or should know" that proportionally equal terms were not given competing customers?

It is readily seen that extensive and complex issues of fact will arise in this case which are precisely within the expertise of the Commission which was, I am advised, established as a quasi-judicial body to determine facts involving business and trade practices such as are here presented before they are offered to the court for enforcement.

At any trial involving penalties, whether before the Commission or elsewhere, it will be necessary to consider evidence on a mass of business operations such as these:

(a) Ancorp was required under its leases to, and did, maintain long special hours at its various stands to cover nights and holidays at terminals, subways, etc., which

were not and could not be maintained by those who sold newspapers at nearby stands. This was especially important because of the various editions. The average street newspaper vendor, who at a small kiosk, operated by himself or even as outside of Grand Central, sold papers from an orange crate during rush hours, could not provide such service. Ancorp's stands are indoors and serve in all weather. When the weather is inclement the small newsstand is practically out of business. He cannot properly display the papers or store them for sale or return. Often he is a part-time worker with another job.

(b) The Sunday Times weighs between 6-1/2 and 7 pounds. On Friday and Saturday there formerly were delivered to each stand six to eight sections which had to be inserted in each copy of the first news section of the Times. An extraordinary amount of work is involved in handling the Sunday Times. Many stands receive 200 heavy Sunday newspapers for sale and delivery on Sunday. There are numerous locations where Sunday papers are not available for sale except at Ancorp stands because such other stands are closed. To service these stands for the newspapers to be sold at all times in these areas, Ancorp was required to hire additional help to handle these Sunday newspapers. Returns must also be counted and handled and when they are returned, no profit is derived from returned papers, although the expense of insertion and handling, consisting of hiring additional employees, is a dead loss.

(c) The newspapers were displayed properly in specially constructed substantial booths which were built according to specifications approved by the terminals. Changes were required to provide maximum display facilities. Specified standards of service have to be maintained. Ancorp was engaged in selling numerous other items but was required to give prime space on the stands to newspapers on which the profits are minimal.

(d) Ancorp was subjected to onerous union contracts which far exceeded the obligations of others or who might be considered in competition with it apart from the individual newsstand operators who, of course, are completely free from any such obligations.

(e) Ancorp uses the system of "pink tickets" designed to prevent losses to the publishers in the handling of cash by drivers and newsstand operators. The customary method for handling returns and payments in the newsstand business is for the drivers to collect the funds and give credit for returns. For example, in recent days, 36 employees of the Daily News and 50 newspaper dealers in Brooklyn were indicted because of losses incurred estimated to run as high as $1,500,000 for the Daily News by reason of the cash methods prevalent in the industry but not applied by Ancorp. The "pink tickets" are reports collected in lieu of cash, checked out through proper computerized and other systems at the home office of Ancorp and requiring a large staff. Each of the publishers saves large sums of money in overhead by reason of this system as well as huge savings

against consistent losses such as those exemplified by the Daily News story.

(f) In out-of-town areas, Ancorp maintained prices established by the New York newspapers although below the customary ones. In the case of Washington, D. C., Ancorp provided a service through its Capitol News Company for delivery to numerous agencies and parties in the city at a minimal profit being required to purchase its papers from a local distributor at the same price as if Capitol was a retailer thus eliminating Capitol from the wholesaler's profit for the distribution. The differential between the maintained prices and the proper prices (confirmed by the increases of customary out-of-town prices) just about equal the total payments from the Times, if not more.

The above are merely some examples of the benefits which the parties knew accrued to the newspapers and were weighed in the legitimate bargaining between them. While profits on newspapers are small as compared to their enormous handling expenses the papers were, in some locations needed for the purpose of sales of other items at newspaper stands required to be sold as a public service. The bargaining power of the publishers was very great notwithstanding their claims to the contrary.

The terminal stands of Ancorp are in a separate category of retail distribution with specific benefits to the newspapers that others could not provide. All this is well known by anyone familiar with the trade and there is no

question but that the newspapers knowingly derived substantial special benefits in their dealings with Ancorp which benefits were not available elsewhere and the cost of which exceeded the sums paid to Ancorp. The whole subject relating to the requirement that Ancorp had to "know or should know" that proportionate payments were not offered to others will require extensive inquiry into the practices of the trade, the knowledge of the parties and the intricacies of their business dealings.

The expertise and the statutory machinery for investigation, hearing and determination in this field lies with the Commission and the hearing of evidence should, we submit, properly be had before the Commission and not in this court.

The commencement of this action without hearing or due process before the Commission on the violations alleged in the complaint herein was premature and should be dealt with accordingly by this court.

It is respectfully requested that the order be granted.

/s/ William McCollough
William McCollough

Sworn to before me this
21st day of July 1971.

Notary Public

ALFRED D'AMBROSIO
Notary Public, State of New York
No. 03-5909025
Qualified in Bronx County
Certificate Filed in New York County
Commission Expires March 30, 1972

EXHIBIT A - FEDERAL TRADE COMMISSION'S COMPLAINT ANNEXED TO THE FOREGOING AFFIDAVIT

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

AMERICAN NEWS COMPANY,
THE UNION NEWS COMPANY,
corporations

DOCKET NO. 7396

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it and by said Act, the Federal Trade Commission, having reason to believe that respondents American News Company and The Union News Company have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH ONE: Respondent American News Company, hereinafter referred to as American News, is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at 131 Varick Street, New York 13, New York. American News has approximately 27 wholesale branches through which it sells and distributes books, stationery, allied merchandise and matches to leading department stores, public libraries, school libraries, book stores and stationery stores throughout the United States. Said respondent also operates through its wholly-owned subsidiary The Union News Company.

PARAGRAPH TWO: Respondent The Union News Company, hereinafter referred to as Union News, a wholly-owned subsidiary of respondent American News, is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 131 Varick Street, New York 13, New York.

Union News, with approximately 1500 newsstands, operates the largest and most important chain of newsstands in the United States through which it sells newspapers, periodicals, books, magazines, stationery, cigars, cigarettes, candies, toys and sundry items (these products are hereinafter referred to collectively as "their products"). Most of respondent's newsstands are located in important railroad stations, bus terminals, airports and office buildings. For example, it operates the newsstands in the three largest railroad stations in the country, namely, Grand Central and Pennsylvania Stations located in New York, New York, and LaSalle Station located in Chicago, Illinois. Among the locations at which it has exclusive concessions are: La Guardia Field, New York; Jamison Airport, Jacksonville, Florida; Love Field, Dallas, Texas; Logan International, Boston, Massachusetts; Hopkin's Airport, Cleveland, Ohio; The Waldorf-Astoria Hotel, New York, New York; Roosevelt Hotel, New Orleans, Louisiana; and Fontainbleau and Carillon Hotels in Miami, Florida. Union News also has the newsstand concessions in some of the largest office buildings, including RCA and the Empire State Buildings, New York, New York. It also operates a chain of restaurants and other facilities located in transportation terminals, along turnpikes and in office buildings.

The principal officers and directors of respondent American News are the principal officers and directors of respondent Union News. American News, through common officers and directors, controls and formulates the policy for the daily operations of Union News.

PARAGRAPH THREE: Respondents, in the course and conduct of their business, have engaged and are presently engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents purchase their products from many suppliers located throughout the various States of the United States and the District of Columbia and cause such products to be transported from various States in the United States and the District of Columbia to other States for distribution and sale by respondents through their chain of retail outlets. There is now and has been for many years a constant current of trade in commerce in said products between and among the various States of the United States and the District of Columbia.

PARAGRAPH FOUR: In the course and conduct of their business in commerce, respondents induced and coerced many of their suppliers, including publishers of certain publications (e. g. magazines, pocket books, comic books), to make payments or allowances, or to contract for payments or allowances, for the benefit of respondents as compensation or in consideration for services or facilities furnished by or through respondents in connection with its handling, sale, or offering for sale of the products sold to them by said suppliers. Respondents knew, or should have known, that said payments or considerations were not being offered or made available on proportionally equal terms to all other customers of their suppliers who were in competition with respondents, and that said payments or considerations were being made in violation of subsection (d) of Section 2 of the Clayton Act, as amended.

As a method of inducing and coercing said suppliers to make the payments or allowances or to enter into the contracts demanded by them, respondents threatened to discontinue purchasing and distributing the products of a number of suppliers unless such suppliers agreed to make such payments or allowances or enter into such contracts. In some instances respondents did discontinue purchasing and distributing through their newsstands products of suppliers who refused to meet respondents' demands for a favored promotion allowance.

PARAGRAPH FIVE: As an example of respondents' practice of inducing unlawful promotional allowances, respondents received approximately $700,000 in 1957 as compensation or in consideration for promoting the publications of certain publishers. Among the publishers making payments or allowances to the respondents in 1957 which were not made available to other competing customers on proportionally equal terms were the following:

Publishers	Approximte Payments Received
McCall Corporation; The Popular Science Publishing Company, Inc.; The Reader's Digest Association, Inc.; Meredith Publishing Company, Inc.; Street & Smith Publications, Inc.; Time, Inc. (distributing through Select Magazines, Inc.)	$107,000

Publishers (Cont'd)	Approximate Payments Received
Curtis Publishing Co., Inc.	$34,900
The Hearst Corporation	31,000
Fawcett Publications, Inc.	21,000
MacFadden Publications, Inc.	19,000
Esquire, Inc.	13,000

Other examples of the aforesaid acts and practices of respondents were their attempts to induce and coerce certain manufacturers of cigars into making payments or allowances to said respondents as compensation or in consideration for promoting and selling the cigars of said cigar manufacturers. Respondents knew, or should have known, that the arrangements they sought from said cigar manufacturers were not being offered or made available on proportionally equal terms to all other competing customers, and if paid, would be in violation of subsection (d) of Section 2 of the Clayton Act, as amended.

PARAGRAPH SIX: In the conduct of their business respondents have been and are in substantial competition with others in the sale of their products and in negotiating and bidding for, leasing, and operating retail newsstand concessions located in transportation terminals, hotels and office buildings. The aforesaid unlawful promotional payments received by respondents were available for respondents' use in making higher payments or offering better terms than many of their competitors for choice newsstand locations. They have also provided respondents with additional financial resources for the increased promotion, merchandising and sales of their products. The effects of the aforesaid unlawful practices have been not only to increase respondents' power and ability to induce and coerce further unlawful promotional allowances from their suppliers, but also have been to substantially lessen and eliminate the ability of other newsstand operators to compete with respondents.

PARAGRAPH SEVEN: The acts and practices as alleged above are all to the prejudice of the public and constitute unfair methods of competition and unfair acts and practices within the intent and meaning of Section 5 of the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 5th day of February, A. D. 1959, issues its complaint against said respondents.

NOTICE

Notice is hereby given to each of the respondents hereinbefore named, that the 15th day of April, A. D. 1959, at 10 o'clock is hereby fixed as the time and Federal Trade Commission Office, United States Court House, Foley Square, New York, New York, as the place when and where a hearing will be had before a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is offered you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. Such answer shall contain a concise statement of the facts constituting the ground of defense and a specific admission, denial or explanation of such fact alleged in the complaint or, if respondents are without knowledge thereof, a statement to that effect.

If respondents elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that respondents admit all material allegations to be true. Such an answer shall constitute a waiver of hearing as to facts so alleged, and an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding shall be issued by the hearing examiner. In such answer respondends may, however, reserve the right to submit proposed findings and conclusions and the right to appeal under Section 3.22 of the Commission's Rules of Practice for Adjudicative Proceedings.

If any respondent elects to negotiate a consent order, it shall be done in accordance with Section 3.25 of the Commission's Rules of Practice.

Failure to file answer within the time above provided and failure to appear at the time and placed fixed for hearing shall be deemed to authorize a hearing examiner without further notice to respondents, to find the facts to be alleged in the complaint, to conduct a hearing to determine the form of order, and, thereafter, to enter an initial decision containing such findings and order.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D. C., this 5th day of February, A. D. 1959.

By the Commission.

(Seal)

Robert M. Parrish,
Secretary.

Conclusions

1. The allowances which were paid by suppliers of magazines, pocket books, paperback and comic books to Respondents, and which were not offered on proportionally equal terms to all the suppliers' other customers competing with Respondents, were paid, as alleged in the complaint, in violation of §2(d) of the Clayton Act.

2. Respondents' acts in inducing their suppliers of magazines, pocket books, paperback and comic books to pay something of value as compensation or in consideration for services or facilities furnished by or through Respondents in connection with the processing, handling, sale or offering for sale of said products, when they knew, or should have known, that such compensation was not affirmatively offered or otherwise made available on proportionally equal terms to all other of their suppliers' customers competing with Respondents in the distribution of such products, were and are an unfair method of competition in commerce, and constitute therefore, as alleged in the complaint, a violation of §5 of the Federal Trade Commission Act.

3. Respondents' attempts to induce and coerce certain cigar manufacturers to make preferential payments to Respondents as promotional allowances for the display and sale through Respondents' news-stands of certain tobacco products were an unfair method of competition in commerce, and constitute therefore, as alleged in the complaint, a violation of §5 of the Federal Trade Commission Act.

4. The Commission has jurisdiction over the Respondents, and over their said acts and practices.

5. This proceeding is in the public interest.

EXHIBIT "B"

ABM:mm
70-3809

AFFIDAVIT OF ALAN B. MORRISON

U.S. DISTRICT COURT
FILED 2-28-71
S.D. of NEW YORK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

Plaintiff,

-against-

ANCORP NATIONAL SERVICES, INC.,

Defendant.

AFFIDAVIT

70 Civ. 3770 MEY

----------x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ALAN B. MORRISON, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Whitney North Seymour, Jr., United States Attorney for the Southern District of New York, and as such I am fully familiar with and in charge of this matter. I make this affidavit based upon the files and other information furnished to me in my official capacity.

2. Annexed hereto as Exhibits A, B, C and D respectively are the Initial Decision of the hearing examiner dated May 26, 1960; the Final Order and Opinion of the Commission dated January 10, 1961; the Final Decree of the United States Court of Appeals for the Second Circuit dated April 27, 1962; and the Modified Order to Cease and

Desist of the Federal Trade Commission dated April 13, 19[illegible]. Each of these [illegible] relates to the proceedings which [illegible] the basis of this [illegible] and civil penalties.

3. [illegible], the Federal Trade Commission had no information indicating that the defendant was receiving payments from any newspapers on account of display or promotional services. The Commission first learned of such payments and of the fact that they were being made in violation of the cease and desist order in this case following the publication of an article in "The Wall Street Journal" to that effect.

4. Thereafter, the Commission made an investigation relating to these violations and on December 12, 1969, pursuant to 15 U.S.C. § 56, certified the facts underlying these violations to the Attorney General.

5. After the certification to the Attorney General but before the Attorney General directed the filing of this action, the defendant made informal submissions to the Antitrust Division of the Department of Justice setting forth its positions.

6. In December 1970, the Attorney General directed the filing of this action, which was commenced on December 31, 1970.

7. This department has been advised by the attorneys of the Federal Trade Commission that the due process issues raised on this motion were also raised in the proceeding entitled United States v. I.T.T. Continental Baking Co. (Civil No. C-120) pending in the United States

ABM:mm
70-3809

District Court for the District of Colorado. Your deponent was also advised that the District Court in that action rejected these arguments from the bench and that there presently exists no order or opinion reflecting this decision.

WHEREFORE, for the reasons set forth in the accompanying memorandum, your deponent prays that the motion of the defendant be in all respects denied.

/S/ ALAN B. MORRISON

Sworn to before me this
28 day of July 1971.

WALTER G. BRANNON
Notary Public, State of New York
No. 24 0394500
Qualified in Kings County
Certificate filed in New York County
Term Expires March 30, 1973

EXHIBITS ANNEXED TO THE FOREGOING AFFIDAVIT

MAY 27 1960
Records Service
SECRETARY

EXHIBIT A - INITIAL DECISION

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

AMERICAN NEWS COMPANY,
THE UNION NEWS COMPANY,
corporations.

DOCKET NO. 7396

INITIAL DECISION

By Abner E. Lipscomb, Hearing Examiner.

J. Wallace Adair and Jerome Garfinkel, for the Commission;

Lester Lewis Jay and Roth and Riseman, by Eugene Frederick Roth, New York, New York, for the Respondents.

1. The Complaint

The complaint herein was issued February 5, 1959, charging the Respondents with having violated §5 of the Federal Trade Commission Act by inducing and coercing various of their suppliers, including publishers of magazines, pocket books and comic books, to make payments or grant allowances to Respondents in connection with the display and sale of such publications on Respondents' news-stands, when Respondents knew, or should have known, that such payments were not being offered or made available on proportionally equal terms to all customers of such suppliers who were in competition with Respondents. The complaint further alleges that Respondents knew, or should have known, that their suppliers' failure to make such payments equally available to all their competing customers was a violation by such suppliers of §2(d) of the Clayton Act.

The relevant provisions of those two Acts are as follows:

The Federal Trade Commission Act:

"Sec. 5. (a) (1) Unfair methods of competition in commerce, * * * * are hereby declared unlawful."

The Clayton Act:

"Sec. 2. (d) That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities."

The complaint further charges that Respondents also attempted to induce and coerce certain manufacturers of cigars, which were sold by the Respondents, into paying similar unlawful allowances to the Respondents, in violation of §5 of the Federal Trade Commission Act.

The complaint concludes that the effect of Respondents' acts and practices has been to increase their power and ability to induce and coerce their publishers and suppliers to make unlawful allowances, and also to lessen substantially the ability of news-stand operators throughout the country to compete with Respondents.

2. The Answer

Respondents entered a general denial of the charges alleged in the Commission's complaint, and in their amended answer listed several affirmative defenses. Particularly, Respondents asserted that the several publishers referred to in the complaint herein, and distributors and others unknown to the Respondents, have been and still are engaged in unlawful contracts and conspiracies to fix and maintain uniform, non-competitive prices for the publications of each publisher. Respondents further asserted that the payments received by them from publishers were not in violation of §5 of the Federal Trade Commission Act, but were obtained in an effort to defend against and defeat the unlawful conspiracy of the publishers and their distributors. Respondents also contended that such payments did not constitute discriminatory preferences to Respondents, as against other retail news-stand dealers in magazines, pocket books, comic books and similar articles, but, to the contrary, created lawful rights in Respondents' competitors to obtain equivalent or greater relief from the oppression of the several conspirators.

3. Ruling on Proposed Findings

Consideration has been given to the entire record herein, including particularly the proposed findings as to the facts and

proposed conclusions submitted by counsel. Each proposed finding as to the facts and each proposed conclusion which has been accepted has been, in substance, incorporated into this initial decision. All proposed findings and conclusions not so incorporated herein are hereby rejected.

4. Identity and Organization of Respondent American News

The Respondent first named in the caption hereof, The American News Company, erroneously designated in the complaint as American News Company, and hereinafter referred to as Respondent American News, is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at 131 Varick Street, New York 13, New York. Prior to August 1, 1957, it operated a wholesale periodical division, through which it distributed magazines, paperback and comic books to various retail outlets located throughout the United States and Canada. During that time it also served as the exclusive distributor of such publications to the news-stands operated by Respondent The Union News Company. In 1957, however, Respondent American News discontinued the phase of its business just described, and since then it has limited itself to the operation of 27 wholesale distribution branches, through which it sells hardcover books and stationery to schools, libraries, institutions and booksellers located throughout the United States. It also distributes hardcover books to various news-stands operated by Respondent The Union News Company.

5. Identity and Organization of Respondent The Union News Company

The second Respondent, The Union News Company, hereinafter referred to as Respondent Union News, is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business at the same location as that of Respondent American News, of which it is a wholly-owned subsidiary.

Respondent Union News is the largest general retail news-stand operator in the United States. In 1958 it operated approximately 300 eating places, such as restaurants and snack bars, in 32 states and the District of Columbia. It also operates more than 1,200 news-stands, gift shops, book and tobacco shops located throughout the country. In April of 1958 it operated approximately 930 news-stand outlets, at which it sold newspapers, tobacco products, magazines, candy and other items, its total sales for that year amounting to approximately $23,940,000. Its sales of magazines in that year amounted to approximately $5,280,000. Respondent Union News operates concessions in important railroad, airport, bus and subway terminals throughout our nation. For example, the Union News Company operates the news-stand concessions in substantially all of the New York

Central Railroad Company's stations, including those located at Utica, Syracuse, Rochester and Buffalo, New York; Detroit, Michigan; and Toledo, Ohio. It operates the news-stands in three of the largest railroad stations in the country, namely, the Grand Central Station and Pennsylvania Station in New York City, and the LaSalle Street Station in Chicago, Illinois. It also operates subway concessions in three of our nation's largest cities, namely, New York, Boston and Philadelphia.

6. Respondents' Relationship to Each Other

As stated above, Respondent Union News is the wholly-owned subsidiary of Respondent American News, and the two corporations have the same address. The evidence shows that Respondent American News, through its officers, has been and still is able to, and does, direct the policies and control the practices of Respondent Union News. Publishers whose magazines are sold by Respondent Union News often take up, for settlement, with the officials of Respondent American News, disputes involving the distribution of publications by the news-stands operated by Respondent Union News. Both oral testimony and exhibits show that the parent corporation, through its officers, forms the policies and directs the business affairs of the subsidiary.

It is clear that Respondent Union News is a mere agency and instrumentality of the parent organization, Respondent American News, and that Respondent American News is fully responsible for the acts and practices of its wholly-owned and controlled subsidiary, Respondent Union News.

7. Respondents' Chief Competitors

The Respondents' principal competitors in the operation of news-stands located in transportation centers throughout the country include ABC Vending Corporation; Commuter News Co., Inc.; Faber, Inc.; and Schermerhorn Cigar Stores, Inc. As of January 1, 1959, ABC Vending Corporation had 57 news-stands; in its fiscal year ending February 1, 1958, Faber, Inc., had 35 news-stands, with sales of approximately three million dollars; in the calendar year 1958, Schermerhorn operated 16 news-stands, with sales of approximately $950,000; and in 1958, Commuter News Co., Inc. operated 16 news-stands, with sales of approximately $420,000. In addition, there are many smaller competitors located in drug stores, hotels and similar places.

8. Interstate Commerce

The news-stands operated by Respondent Union News are located throughout the United States and in the District of Columbia. The individual news-stands are not separately incorporated in the various states or operated as individual organizations. In fact, all of the news-stands of the Respondent are grouped according to

location into eight divisions. Each division is directed by a supervising manager, whose principal duty is to oversee the operation of such news-stands by checking inventory, promoting sales and making a monthly report to the Respondent's home office in New York City.

In addition, the publications and other products purchased by Respondent Union News for sale through its news-stands are shipped to said news-stands by suppliers who are, in many instances, located in states other than those in which the news-stands are located. In numerous instances Respondent Union News is billed for such publications and products at its home office in New York City, by suppliers thereof who are located elsewhere than in the State of New York. The evidence clearly shows that the purchase and sale of Respondent's publications and other products involve the transaction of business between persons located in divers states of the United States and in the District of Columbia. Accordingly, it must be concluded that Respondents are, in fact, engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

9. Seller-Customer Relationship

The charges in the complaint that Respondents have coerced their suppliers, including the publishers of magazines, pocket books and comic books, into making payments to them in connection with the sale of such publications, which payments Respondents knew or should have known were not made on proportionally equal terms to Respondents' competitors, require that we examine carefully the business relationship between Respondents on the one hand and their suppliers and publishers on the other. The evidence shows that the publishers of the various magazines and other publications distributed to the public by Respondents' news-stands did not sell and deliver those publications directly to the Respondents, but employed two intermediaries in the making of such sales and deliveries. First, each publishing company employed as its agent a national distributor; and, second, the national distributor employed a local wholesale distributor, who delivered the publications to Respondents and their competitors.

One of such national distributors is Select Magazines, Inc., the stock of which is owned by six publishers, namely, McCall Corporation; Popular Science Publication, Inc.; The Reader's Digest Association, Inc.; Meredith Publishing Company; Street & Smith Publications, Inc.; and Time, Inc. Other national distributing companies performing similar functions for various publishing companies are the Curtis Circulation Company, Popular Publications, Inc., and Kable News Company. The contractual arrangements between these distributors and the publishers they serve provide, in general, as follows:

1. that the national distributor shall make all the necessary arrangements for the distribution of each publisher's publications;

2. that the national distributor shall sell the publications of each publisher at a price fixed by such publisher;

3. that the national distributor is to reimburse each publisher for all moneys collected in connection with the sale of its publications, less a fee for the distributor's services;

4. that the national distributor may extend credit to wholesale distributors, retailers, or other customers;

5. that losses suffered by the national distributor from uncollectible debts are borne by the publisher;

6. that the national distributor is to advise the publishers as to the estimated number of copies of magazines needed for distribution, to be used as a guide by each publisher in determining the number of copies of their publications to be distributed;

7. that shipping charges on its publications are paid by each publisher; and

8. that wholesalers and retailers are reimbursed by each publisher for the return of unsold copies of its publications.

The contracts between the national distributors and local wholesale distributors in various areas provide, in general, th

1. the wholesalers shall sell to retailers at prices fixed by the national distributor;

2. the wholesale distributors shall be limited to specified areas;

3. the wholesale distributors shall distribute the various publications to retailers on a date specified by the national distributor;

4. each wholesale distributor shall make periodic check-ups in accordance with a schedule to be provided by the national distributor;

5. each wholesale distributor shall receive full credit for unsold publications returned to the national distribu and

6. each wholesale distributor shall receive a commission for services performed. 47a

Because of the above-described relationship, and particularly because the publishers retain control of all financial details affecting the sale of their publications to the Respondents, such as the price at which publications are to be sold, the terms and conditions of sale, and the granting of promotional payments and allowances, the national and local wholesale distributors must be regarded as mere instrumentalities of the publishers. Accordingly, the sale of magazines, pocket books and comic books to Respondents and other retail distributors of such publications must be regarded as, in substance, a sale by said publishers to the Respondents. Because of this fact, the news-stand dealers, including Respondents, are customers of the publishers within the intent and meaning of §2(d) of the Clayton Act.

10. Publishers Coerced by Respondents to Grant Allowances

The evidence shows that both corporate Respondents, acting through their officials, have made demands upon various publishers for special payments. Respondents call these special payments a "display promotional allowance", and require the publishers to make such payments as a condition to the continued display and sale of their publications by Respondents on their news-stands. For example, a letter dated November 20, 1957, from Time, Inc. to Mr. Herbert Frilen, an official of Respondent American News, confirms the arrangement for the payment of such an allowance. This letter, it should be observed, is addressed to an official of the parent corporation, Respondent American News, rather than to an official of the subsidiary corporation, Respondent Union News. It states in part as follows:

> "This will confirm the agreement made in your office on November 18th for Time, Life, Sports Illustrated and Fortune on stands operated by the Union News Company."

In a letter dated June 1, 1956, Mr. Grunewald, vice president of Respondent Union News Company, wrote to Mr. Milton Gorbulen of Modern Photography, stating in part as follows:

> "Effective with the next issues and thereafter, it will be necessary for us to receive a sales rebate on the basis of 10% of the retail price for all publications handled by the Union News Company operations."

Mr. Gorbulen replied to the aforesaid letter, in part, as follows:

> "I assume that if this new rate is unacceptable to us, our magazines would not be distributed on your outlets. In view of this situation we have no recourse but to

say yes. In accepting this stiff rebate I believe it is only fair to expect the best possible service from the Union News Company in the way of sales and displays ....service that heretofore has been far from good."

On March 1, 1957, Mr. Grunewald wrote Popular Publications in part as follows:

"We ask that you acknowledge the receipt of this letter [the February 11th letter] and, not having heard from you, we wish to reconfirm the fact that we will start billing you at the new promotional allowance rebate as stated in our letter."

By the above statements and others similar thereto, the Respondents have made clear, in unilateral demands upon various publishers, that such publishers must pay promotional allowances at a rate determined, not by them, but by the Respondents. From the evidence in the record we must conclude that the Respondents have induced and coerced various publishers of magazines, paper-back or comic books, directly or through the national distributor, to grant them promotional payments or allowances as compensation or in consideration for services or facilities furnished by or through Respondents in connection with the handling, sale or offering for sale of publications sold to Respondents by such publishers.

11. Amount of Payments

The record shows that during 1957 Respondents received from various publishers approximately $700,000 as compensation or in consideration for promotional displays on their news-stands in connection with the sale of the publications of said publishers, including the following:

Approximately	From
$ 34,900	Curtis Publishing Company;
31,000	The Hearst Corporation;
21,000	Fawcett Publications, Inc.;
19,000	MacFadden Publications, Inc.; and
13,000	Esquire, Inc.

In 1958 Respondents received approximately $890,000 of such promotional payments from various publishers.

12. Discrimination in Allowances Known to Respondents

As we have previously shown, the promotional allowances paid to the Respondents by various publishers were demanded by the Respondents and individually negotiated by them. In fact, the evidence shows that the amounts of the promotional allowances paid

to the Respondents were determined, at least in several instances, unilaterally by officials of Respondent American News, and thereafter coercive demands were made upon publishers for the payment of such unilaterally-established allowances. Both testimony and exhibits show that Respondents' officials were informed by a number of publishers' officials that the promotional allowances demanded by Respondents were higher than any which the various publishing companies were paying to Respondents' competitors. We are compelled, therefore, to conclude that the promotional payments or allowances paid to Respondents by various publishers, directly or through their national distributors, were not offered or otherwise made available on proportionally equal terms to all other customers of such publishers competing with Respondents; and that Respondents had been informed by the publishers of that fact. 49

13. Effect of Discrimination in Allowances on Respondents' Competitors

Not only are the Respondents the leading news-stand operators in the United States in the number of news-stands operated and periodicals sold, but their margin of leadership over their competitors has been steadily increasing during the period of time here involved. Respondents and their competitors frequently bid or otherwise compete for the same news-stand location. In some instances, the difference in bids is slight. For example, in 1956 Respondents offered to pay the Statler Hotel chain approximately 15-1/2% of the gross sales to be earned through the news-stands in its hotels, while Faber, Inc., which had been operating in those locations, offered approximately 14% of such prospective gross sales. Respondents were awarded the Statler concessions. Likewise, in 1956 the ABC Vending Corporation lost to Respondents the franchise to operate the news-stands on the Boston subway system. In 1957 Respondents obtained 54 concessions for news-stands formerly occupied by their competitors.

The evidence shows, further, that as a general rule the profit from the operation of a news-stand is small, and that the difference in promotional allowances or payments received by a news-stand operator may well determine whether he will succeed or fail. We conclude that the effect of Respondents' receipt of unlawful promotional allowances has been a major factor in enabling Respondents to offer higher percentages of their gross receipts in order to secure news-stand locations, frequently from their competitors, and thereby to acquire an increasing number of such news-stand locations, which in turn enables Respondents to demand progressively higher promotional allowances from publishers, thereby completing a vicious circle.

14. Attempted Coercion of Cigar Manufacturers

Respondents' demands upon their suppliers for promotional payments or allowances was not limited to the sale of publications

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They attempted likewise to induce and coerce certain cigar manufacturers to grant such payments. In 1955, Mr. Grunewald of Respondent American News requested a display allowance for Respondent Union News from Mr. Morton G. Myers, Assistant Vice President of General Cigar Company. Concerning this request, Mr. Myers testified as follows:

"Q. What did you tell Mr. Grunewald?

"A. I told Mr. Grunewald that our company couldn't give any display allowance because we don't give a display allowance to any of our customers. I also told him that we would be in violation of law if we did."

Mr. Myers further testified that for about a year thereafter, Respondents did not buy cigars from the General Cigar Company. This evidence, which was not controverted, justifies the conclusion that Respondents were attempting to coerce the General Cigar Company into paying the allowance demanded, but in this instance did not succeed in so doing.

15. Respondents' Defenses

(a) Respondents, in their amended answer as well as in their examination of witnesses and in their proposed findings as to the facts, have endeavored to justify the various promotional payments demanded and received by them from publishing companies on the theory that the publishing companies and their national distributors of magazines, paperbacks and comic books have been and are now in a conspiracy to fix and control prices of such publications, in violation of §1 of the Sherman Act. Respondents contend that such conspiracy is shown by the fixed prices at which such publications are sold to retail news-stands, and the fixed prices at which news-stand dealers are required to resell those publications. Respondents further contend that because of such fixed prices and unlawful conspiracy, they have been and are justified, as a defensive measure, in demanding discounts and allowances from the various publishers.

Although it is a fact that the publishing companies have fixed the wholesale and retail prices of their publications, Respondents have not established that the publishing companies have been or are engaged in a conspiracy in violation of §1 of the Sherman Act. Furthermore, the unlawful activities of one company, even if established, do not and cannot legally justify unlawful activities of another. In Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc., et al., 340 U.S. 211, 214 (1951), the Supreme Court stated this principle as follows:

"If petitioner and others were guilty of infractions of the antitrust laws, they could be held responsible in appropriate proceedings brought against them by the

Government or by injured private persons. The alleged illegal conduct of petitioner, however, could not legalize the unlawful combination by respondents nor immunize them against liability to those they injured." 51a

Plainly Respondents' defense that violation of the Sherman Act renders legal violation of the Clayton Act is without merit.

(b) As a second defense, Respondents have shown that the publications they sell are also sold by the publishing companies through subscriptions at prices lower than the news-stand prices, which are the cover prices on the magazines. Respondents argue that as a result of such fact, the publishers are in actual competition with the news-stand dealers. Respondents further contend that because of such competition, Respondents are justified in seeking to meet such competition by securing promotional allowances from the publishing companies.

In considering this contention, we must remember that the gravamen of the complaint is the inducing of allowances by the Respondents from the publishers, to the prejudice of Respondents' news-stand competitors. The fact that a publisher is also, through its subscription sales, a competitor does not alter the fact that the inducement of a preferential allowance is a violation of law. Accordingly, Respondents' second defense is also without merit.

Conclusions

1. The allowances which were paid by suppliers of magazines, pocket books, paperback and comic books to Respondents, and which were not offered on proportionally equal terms to all the suppliers' other customers competing with Respondents, were paid, as alleged in the complaint, in violation of §2(d) of the Clayton Act.

2. Respondents' acts in inducing their suppliers of magazines, pocket books, paperback and comic books to pay something of value as compensation or in consideration for services or facilities furnished by or through Respondents in connection with the processing, handling, sale or offering for sale of said products, when they knew, or should have known, that such compensation was not affirmatively offered or otherwise made available on proportionally equal terms to all other of their suppliers' customers competing with Respondents in the distribution of such products, were and are an unfair method of competition in commerce, and constitute therefore, as alleged in the complaint, a violation of §5 of the Federal Trade Commission Act.

3. Respondents' attempts to induce and coerce certain cigar manufacturers to make preferential payments to Respondents as promotional allowances for the display and sale through Respondent

news-stands of certain tobacco products were an unfair method of competition in commerce, and constitute therefore, as alleged in the complaint, a violation of §5 of the Federal Trade Commission Act. 52a

4. The Commission has jurisdiction over the Respondents, and over their said acts and practices.

5. This proceeding is in the public interest.

Accordingly,

IT IS ORDERED that Respondents The American News Company and The Union News Company, corporations, their officers, employees, agents or representatives, directly or through any corporate or other device, in or in connection with the purchase of products in commerce, as "commerce" is defined in the Federal Trade Commission Act, for resale on news-stands operated by Respondents, including magazines, pocket books, paperback and comic books, newspapers, cigars, candy, toys and sundry items, do forthwith cease and desist from:

1. Attempting to induce or inducing, by any means, any of their suppliers to pay anything of value to or for the benefit of Respondents as compensation or in consideration for any services or facilities furnished by or through Respondents in connection with the processing, handling, sale or offering for sale of any product, when Respondents know, or should have known, that the compensation or consideration requested or demanded has not been and is not being affirmatively offered or otherwise made available on proportionally equal terms to all other of said suppliers' customers competing with Respondents in the distribution of such product;

2. Receiving anything of value from any of their suppliers as compensation or in consideration for any

services or facilities furnished by or through Respondents in connection with the processing, handling, sale or offering for sale of any product, when Respondents know, or should have known, that such compensation or consideration has not been and is not being affirmatively offered or otherwise made available on proportionally equal terms to all other customers of said suppliers competing with Respondents in the distribution of such product. 53a

Abner E. Lipscomb
Abner E. Lipscomb,
Hearing Examiner.

May 26, 1960.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Earl W. Kintner, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern
Edward K. Mills, Jr.

In the Matter of AMERICAN NEWS COMPANY, THE UNION NEWS COMPANY, corporations.	DOCKET 7396

FINAL ORDER

This matter having been heard by the Commission upon the respondents' appeal from the initial decision of the hearing examiner and upon briefs filed in support of and in opposition to the appeal; and the Commission having rendered its decision denying in part and granting in part the appeal and having determined, for reasons stated in the accompanying opinion, that the initial decision should be modified:

IT IS ORDERED that the initial decision of the hearing examiner be, and it hereby is, modified by striking therefrom finding 14 headed "Attempted Coercion of Cigar Manufacturers" and paragraph numbered 3 under the heading "Conclusions"; and by substituting the following order for the order therein contained:

> "IT IS ORDERED that the respondents, The American News Company and The Union News Company, corporations, their officers, employees, agents or representatives, directly or through any corporate or other device, in or in connection with the purchase in commerce, as 'commerce' is defined in the Federal Trade Commission Act, of products for resale on newsstands operated by respondents, do forthwith cease and desist from:

"Inducing, receiving or contracting for the receipt of anything of value from any of their suppliers as compensation or in consideration for services or facilities furnished by or through respondents in connection with the processing, handling, sale or offering for sale of products purchased from any of their suppliers, when respondents know or should know that such compensation or consideration is not affirmatively offered or otherwise made available by such suppliers on proportionally equal terms to all of their other customers competing with respondents in the sale and distribution of such suppliers' products."

IT IS FURTHER ORDERED that the initial decision, as so modified, be, and it hereby is, adopted as the decision of the Commission.

IT IS FURTHER ORDERED that the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

By the Commission, Commissioner Mills not participating for the reason he did not hear oral argument.

SEAL

Robert M. Parrish,
Secretary.

ISSUED: January 10, 1961

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Earl W. Kintner, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern
Edward K. Mills, Jr.

In the Matter of AMERICAN NEWS COMPANY, THE UNION NEWS COMPANY, corporations.	DOCKET 7396

OPINION OF THE COMMISSION

By Secrest, Commissioner:

The complaint in this matter charges that respondents have engaged in unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. Paragraph Four alleges that respondents have knowingly induced or coerced many of their suppliers to make discriminatory payments or allowances to them as consideration for services or facilities furnished by respondents in connection with the handling or sale of the suppliers' goods. Therefore, in effect, the complaint charges that respondents knowingly induced their suppliers to violate subsection (d) of Section 2 of the amended Clayton Act.

Paragraph Four, containing the principal charge of the complaint, is couched in general terms. Paragraph Five sets out "examples" of the specific types of unlawful conduct sought to be reached. The first "example" alleges the inducement and receipt by respondents of substantial sums of money from named magazine and book publishers during 1957. The second "example" does not appear to us to be exemplary of the principal charge made in Paragraph Four, but constitutes what must be considered a separate and distinct charge. This

"example" deals with respondents' alleged attempts to knowingly induce certain cigar manufacturers to grant them discriminatory payments which, if granted, would place such suppliers in violation of subsection (d) of Section 2 of the amended Clayton Act. The record indicates that this alleged activity was presented, defended and argued as a separate violation and not as a part of the general "inducing and receiving" charge of Paragraph Four, in spite of the inexact language describing it as an "example" of the general charge.

After hearings, the hearing examiner filed an initial decision in which he concluded that respondents had committed two distinct violations. He issued a two-part order to cease and desist, one part enjoining respondents from knowingly attempting to induce or inducing discriminatory payments, and the second part prohibiting the actual receipt of such payments. It is from this order that respondents have appealed.

Respondent, The Union News Company, is a corporation wholly owned by respondent, The American News Company. Union is the largest retail newsstand operator in the country. In April 1958, Union operated approximately 930 newsstands located, for the most part, in airports, railroad or subway stations and hotels. Its sales through these newsstands for the year 1958 were approximately $23,940,000. Of this amount a substantial portion, $5,280,000, was accounted for by the sale of magazines. The remainder was principally accounted for by sales of newspapers, tobacco products, candy, books and toys. Union also operates more than 300 restaurants or snack bars and approximately 200 gift, book or tobacco shops.

Respondent, The American News Company (erroneously named in the complaint American News Company), completely dominates and controls its wholly owned subsidiary, Union. Its president, secretary and treasurer hold the same positions in Union, and the directors of American, for the most part, serve as directors of Union. The two corporations have the same address. American appears to consider Union as one of its integral parts, for its 1958 annual report to stockholders refers to Union as a "division" and to Union's activities as the acts of "your company." But more important than these considerations is the substantial evidence that officers of American, some of whom hold no official position with Union, actively participate in the management and conduct of the affairs of Union. In fact, much of the very activity with which this matter is concerned was conducted by the officers of American. We feel that these facts are more than adequate to satisfy even the

criterion of complete control applied in the National Lead 1/ case and conclude that American is responsible for and does control the activities of its subsidiary, Union.

Respondents contend that Union, with respect to its dealings in magazines in the several states (excluding the District of Columbia) is not engaged in interstate commerce. 2/ Respondents concede that the wholesalers who supply Union receive their supplies of magazines in interstate commerce, but urge that the handling of these shipments by the wholesalers interrupts the flow of commerce and, therefore, that the subsequent deliveries by the wholesalers to Union were intrastate transactions. It would appear that the wholesalers break up the magazine shipments they receive into separate bundles containing a specified number of copies and deliver these bundles to each of their retailers, including the Union stands.

Three distinct grounds impel the rejection of respondents' contention. First, activities within the District of Columbia are in themselves sufficient to vest the Commission with jurisdiction over respondents. 15 U.S.C. § 44 (1958). Second, the warehousing and trans-shipment operations of the wholesalers are not of a character sufficient to halt the flow of commerce. Holland Furnace Co. v. Federal Trade Commission, 269 F.2d 203 (7th Cir. 1959), cert. denied, 361 U.S. 932 (1960) and cases cited therein; Standard Oil Co. v. Federal Trade Commission, 340 U.S. 231 (1951). See Stafford v. Wallace, 258 U.S. 495 (1922). Third, Section 5 of the

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1/ National Lead Company v. Federal Trade Commission, 227 F.2d 825, 829 (7th Cir. 1955), rev'd. on other grounds, 352 U.S. 419 (1957).

2/ In support of their contention respondents cite East Ohio Gas Co. v. Tax Commission, 283 U.S. 465 (1931); Lawson v. Woodmere, Inc., 217 F.2d 148 (4th Cir. 1954); Brosius v. Pepsi Cola Co., 155 F.2d 99 (3rd Cir. 1946); and Ewing-Von Allmen Dairy Co. v. C & C Ice Cream Co., 109 F. 898 (6th Cir. 1940). The basic issue in these cases is whether a business operating within a single state is engaged in interstate commerce solely because of the purchase in commerce of raw materials used in the intrastate manufacture and sale of finished products. The issue now before us is materially different. It is noteworthy that in the Holland Furnace case the Court of Appeals for the Seventh Circuit specifically distinguished the Lawson, Brosius and Ewing-Von Allmen cases. 269 F.2d at 210-211.

Federal Trade Commission Act in terms applies to "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce." 15 U.S.C. § 45 (1958). Thus, the relevant jurisdictional issue is whether the practices subjected to challenge were employed in commerce, and not whether all operations of the entity employing the methods, acts or practices were performed in interstate commerce. 3/ The record in this case fully supports a finding that the practices challenged in the complaint were used "in commerce."

As noted above Union's plea of lack of commerce is confined to its dealings in magazines. It denies further that it is the customer of the out-of-state magazine publishers who made or authorized the payments to Union. Quite obviously, a finding for respondents on this point would defeat the complaint on more than jurisdictional grounds since it is an essential element of the alleged violation that Union is, in fact, a "customer" of the suppliers from which it induced payments. This is so since the complaint charges that respondents induced their suppliers to violate subsection (d) of Section 2 of the amended Clayton Act, which prohibits discriminatory payments " * * * to or for the benefit of a customer * * *." Thus, the complaint must fail if Union is not the "customer" of the magazine suppliers.

3/ Federal Trade Commission v. Cement Institute, 333 U.S. 683 (1948); Standard Container Manufacturing Association, Inc., et al. v. Federal Trade Commission, 119 F.2d 262 (5th Cir. 1941); Chamber of Commerce of Minneapolis v. Federal Trade Commission, 13 F.2d 673 (8th Cir. 1922). See also our interlocutory decision in S. Klein Department Stores, Inc. (D. 7891, November 18, 1960) which is directed solely to the nature of jurisdiction conferred by Section 5 of the Federal Trade Commission Act.

For the most part, leading magazine publishers distribute their publications through national distributors which redistribute to wholesalers who, in turn, distribute to retailers. These arrangements are generally on an exclusive basis, that is, the publisher uses only one national distributor to handle its magazines in the entire country, and wholesalers are granted exclusive rights within defined territories.

In certain cases the national distributor is owned by the publishers. For example, Select Magazines, Inc., which distributes the publications of McCall Corporation, Popular Science Publications, Inc., The Reader's Digest Association, Inc., Meredith Publishing Company, Street & Smith Publications, Inc., and Time, Inc., is owned in equal parts by these publishers. The Curtis Publishing Company distributes its magazines through its wholly owned subsidiary, Curtis Circulation Company. Both Select Magazines, Inc., and Curtis Circulation Company distribute additional important magazines not published by their owners.

Kable News Company is an important independent national distributor distributing the magazines, pocketbooks and comic books of approximately fifty publishers. Some publishers, such as Popular Publications, Inc., do not employ national distributors but distribute directly to wholesalers.

In every instance the agreements between the publishers and national distributors specify the prices which are to be charged by the national distributor to the local wholesaler and by the local wholesaler to the retailer. Credits granted to wholesalers and retailers for unsold magazines are borne by the publishers. The publishers fix the date when new issues of magazines will be distributed to retailers and the dates when unsold copies are picked up for credit. Neither the national distributor nor the local wholesaler has any control over the prices, terms and conditions of sale to retailers of the magazines they handle. These details are all determined by the publisher.

Respondents, themselves, apparently recognize the lack of authority of the local wholesaler, for all of their requests for payments or allowances were made to the publishers, either directly or through a national distributor. If made through a national distributor, it was understood that approval and payment of the requested allowance would come from the publisher.

In this situation we are not disposed to apply legal principles of the law of sales, contracts or agency to determine whether a customer-seller relationship exists between Union and the publishers. Where, as here, the seller fixes the prices, terms and conditions of sale and negotiates directly with a retailer, the relationship between them is that of customer-seller, irrespective of the fact that the goods, in their transit from seller to customer, pass through the hands of wholesalers. As we have stated:

> "A retailer is none the less a purchaser because he buys indirectly if, as here, the manufacturer deals with him directly in promoting the sale of his products and exercises control over the terms upon which he buys." 4/

In none of the cases where a court has failed to find a seller-customer relationship has there been a showing of both price control and direct dealings. 5/

Thus, we conclude that Union is in fact the customer of the publishers which supply it with magazines. We hold also that there is a continuous and uninterrupted flow or stream of commerce from the publishers to Union's newsstands. The acts of respondents in soliciting and receiving payments or allowances from such suppliers were performed within said stream and were acts in "commerce" as that term is defined in the Federal Trade Commission Act.

4/ In the matter of Kraft-Phenix Cheese, 25 F.T.C. 537, 546. See also Elizabeth Arden, Inc. v. Federal Trade Commission, 156 F.2d 132 (2d Cir. 1946).

5/ See e.g., Klein v. The Lionel Corp., 138 F. Supp. 560 (D. Del. 1956), appeal denied 237 F.2d 1[illegible] (3d Cir. 1956); Baim & Blank, Inc. v. Philco Corp., 148 F. Supp. 541 (E.D.N.Y. 1957); Skinner v. United States Steel Corp., 233 F.2d 762 (5th Cir. 1956).

Respondents do not deny that they induced and received payments of substantial sums from publishers. In the year 1958, monies received from this source totaled approximately $890,000. The manner in which these payments were induced represents a classic example of the misuse of the economic power possessed by large buyers. For the most part, respondents did not bargain with or request payments from publisher suppliers but merely informed them that as of a certain date the publisher must make payments to Union at a rate specified by Union. A typical letter demanding payments reads in part:

> 'Effective with the regular publications that go on sale after March 1, 1957, the promotional allowance rebate will be as follows:
>
> 2¢ for a 15¢ publication
> 3¢ " " 20¢ "
> 3¢ " " 25¢ "
> 5¢ " " 35¢ "
> 8¢ " " 50¢ "
> 10¢ " " 75¢ "

If the publisher refused to accede to the demands of respondents, its publications were dropped from all Union stands. For example, the circulation manager of Popular Mechanics refused respondents' demands in a letter which said in part:

> "To us your demand is exorbitant and surprising. The allowance you are asking cannot be justified on a quantity basis inasmuch as the Union News Company stands have never made the sales for us that the management of American News regularly implied."

In a reply letter the vice president of Union informed this publisher:

> "We are receiving a rebate of 6¢ per copy on all 35¢ publications and we cannot give you a cheaper rebate than any of the other publishers. Therefore, it will be necessary to discontinue handling this publication at our newsstands."

Respondents claim (1) that the payments they induced and received were price adjustments and not allowances for services rendered in connection with the publishers' magazines; (2) that they did not have knowledge that the payments were higher than those received by other retailers; (3) that the payments were induced in defense against the unlawfully fixed prices of the publishers; and (4) that even if proven in all respects, their acts did not violate Section 5 of the Federal Trade Commission Act.

In respondents' contention that the payments were price reductions and not promotional allowances, we find little merit. While it is true that in some cases respondents did not specifically agree to perform any services as consideration for the monies received, in other instances they did contract to afford publishers preferred display positions on Union newsstands. In many of their letters of solicitation respondents' officials refer to the payments requested as "promotional allowances." The fact that respondents did not render promotional services to the full measure of the monies received, if anything, compounds the unfairness of their acts. 6/

We are not persuaded that respondents lacked knowledge that the payments induced and received were not afforded to competing retailers on proportionally equal terms. The record shows that not one retailer competing with Union received a payment or allowance from a publisher at a rate proportionally equal to that received by Union. There is direct evidence that publishers informed respondents of their regular promotional allowance rates which were considerably lower than the rates demanded and received by respondents. A buyer who induces a seller to depart from his customary pattern of allowances and grant a promotional payment two or three times greater than previously paid does so at his peril unless possessed of

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6/ The Senate Committee reporting on Section 2(d) said:

"Such an allowance becomes unjust when the service is not rendered as agreed and paid for, or when, if rendered, the payment is grossly in excess of its value, or when, in any case the customer is deriving from it equal benefit to his own business and is thus enabled to shift to his vendor substantial portions of his own advertising cost, while his smaller competitor, unable to command such allowances, cannot do so." S. Rep. No. 1502, 74th Cong., 2d Sess., p. 7, (1936).

particular knowledge that the seller has granted like concessions to others similarly situated.

One of respondents' principal contentions in oral argument was that their demands on publishers were made defensively to offset the effects of an illegal vertical price fixing conspiracy which constricted respondents' magazine profit margin. The logical answer to this contention is that if such a conspiracy did exist it is no defense for respondents to engage in further unlawful activity in an attempt to offset or nullify the alleged trade restraining activities of the publishers. This principle as announced by the Supreme Court in the Kiefer-Stewart 7/ case is to the effect that:

> "* * * If petitioner and others were guilty of infractions of the antitrust laws, they could be held responsible in appropriate proceedings brought against them by the Government or by injured private persons. The alleged illegal conduct of petitioner, however, could not legalize the unlawful combination by respondents nor immunize them against liability to those they injured. * * *"

Obviously, respondents had legal processes available through which they could have challenged the alleged illegal actions of the publishers and the substitution of their actions for these legally established processes in no way immunizes them from proceedings by this Commission. Also, respondents apparently have overlooked the fact that the brunt and impact of their acts fall primarily on innocent third parties, and we would indeed be remiss to allow such acts to continue.

For the most part, newsstands are operated upon the premises of others under a lease granted by the owner of the premises. There is active competition for these locations between respondents and other operators of newsstands. Generally, when a location becomes available, the owner of the premises requests bids from newsstand operators and, of course, the operator able to bid the highest rental is allotted the location. Thus, it can be readily seen that the respondents' successful inducement of large payments from publishers greatly enhances their ability to outbid their competitors.

7/ Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc., 340 U.S. 211, 214 (1951).

Union's great size in comparison with its newsstand operator competitors places it in a position of near dominance in the field. 8/ Profit margins realized from the operation of newsstands are very small and the total newsstand sales of magazines has shown a substantial decline over the past ten years. On these facts it is patently obvious that to allow respondents to continue receiving large sums not received by their competitors would inevitably lead to the demise of the competitors and the attainment of a monopoly by respondents. This is too dear a price to pay as consideration for the doubtful benefits to be realized from a laissez faire approach to unlawful activity allegedly pursued for the purpose of combatting the alleged unlawful activity of others.

There remains for consideration respondents' contention that the knowing inducement and receipt of discriminatory promotional allowances is conduct outside the purview of the Federal Trade Commission Act. They argue that Congress by not including a sanction of such conduct in the Robinson-Patman Act must have intended to withhold it from condemnation. This same argument was made in the Grand Union 9/ case, and since respondents' presentation of it contains nothing new, our opinion in that matter is dispositive of the issue.

The hearing examiner found, among other things, that respondents' unsuccessful attempts to induce discriminatory payments from suppliers are in themselves unfair methods of competition. There is little disagreement on the facts. The record evidence indicates

---

8/ In 1958 Union operated 930 newsstands. At approximately the same period its principal competitors were:

ABC Vending Corp.	57 newsstands
Commuter News Co., Inc.	16 newsstands
Schermerhorn Cigar Stores, Inc.	16 newsstands
Faber, Inc.	35 newsstands

9/ The Grand Union Company, Docket 6973, August 12, 1960.

that two large cigar manufacturers initiated a series of conferences for the purpose of requesting improved displays for their brands of cigars. 10/ Respondents thereafter proposed that certain allowances be accorded them for promotional purposes, which request was refused, with both of the cigar companies advising that they did not accord promotional allowances to any of their customers for display purposes. Thereafter respondents discontinued or greatly curtailed their purchases of cigars from these companies.

A request for a promotional allowance does not necessarily constitute an inducement of a violation of Section 2(d). Respondents point out, quite correctly, we think, that the cigar manufacturers could have lawfully complied with their requests by simultaneously granting an allowance on proportionally equal terms to other retailers competing with Union. Union did not specify that the requested allowance must be granted to it alone. Thus, unless it can be inferred from the record facts that respondents were requesting preferred or discriminatory treatment, this charge of the complaint must fail. In

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10/ An official of one of the cigar companies testifying in support of the complaint described a typical meeting with Union as follows:

> "A We also at that conference talked about the display and sale of our brands. Mr. Van Brunt said, 'You know, Mr. Rynn, we get paid for display on our stands.' I said, 'Well, there is an exception to every rule. Our cigars are very good sellers. Perhaps you would like to give us a little break on the display.'
>
> "He said, 'We will be glad to, if you pay for the display the same as the other manufacturers are doing.' I said, 'Do you mean to tell me, Mr. Van Brunt, that every cigar that is on display you are getting paid for?'
>
> "His answer was, 'Yes, we are.' I said, 'Mr. Van Brunt, we cannot pay you for the display on our cigars. It is against company policy. Even if we wanted to, it is against company policy. We do not allow any display allowance to any chain or any of our distributors.'
>
> "He said, 'Well, I guess things will have to stand the way they are.' That was about the end of the discussion."

our view the facts in evidence do not support counsel supporting the corplaint's contention that respondents were seeking to induce a violation of Section 2(d). We do not, therefore, reach the issue of whether an attempt to induce preferred or discriminatory allowances or treatment would violate Section 5 of the Federal Trade Commission Act, but are confining our holdings here to the pleadings and the evidential facts of record. Accordingly we are granting respondents' appeal to this extent and that part of the hearing examiner's initial decision and proposed order dealing with and prohibiting respondents from attempting to induce discriminatory payments from their suppliers will be stricken. We feel that the public interest will be adequately served by an order prohibiting respondents from actually receiving discriminatory allowances from their suppliers, including cigar manufacturers.

From our examination of the record we conclude that respondents were accorded a fair hearing. An appropriate order to cease and desist, amended to conform with this opinion, will issue.

Commissioner Mills did not participate in the decision herein for the reason he did not hear oral argument.

January 10, 1961

D 7396
4-17-62

EXHIBIT C - FINAL DECREE OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RECEIVED
APR 30 1962
APPELLATE DIVISION

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AMERICAN NEWS COMPANY and THE UNION NEWS COMPANY,

Petitioners,

v.

Docket No. 26857

FEDERAL TRADE COMMISSION,

Respondent.

FINAL DECREE MODIFYING AND, AS MODIFIED, AFFIRMING AND ENFORCING ORDER TO CEASE AND DESIST

The American News Company and The Union News Company, corporations, petitioners herein, having filed in this Court on March 14, 1961, a petition to review and set aside an order to cease and desist issued against them on January 10, 1961, by the Federal Trade Commission, respondent herein, in a proceeding before it entitled "In the Matter of American News Company, The Union News Company, corporations, Docket No. 7396"; and a copy of said petition having been served upon respondent; and respondent having thereafter certified and filed in this Court a transcript of the entire record in said proceeding; and the matter having been heard by this Court on briefs and oral argument on October 10, 1961; and this Court having rendered its decision on February 7, 1962;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the prayer of the aforesaid petition to set aside the order of the Federal Trade Commission be, and it hereby is, denied;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid order to cease and desist be, and it hereby is, modified to read as follows:

"IT IS ORDERED that the respondents, The American News Company and The Union News Company, corporations, their officers, employees, agents or representatives, directly or through any corporate or other device, in or in connection with the purchase in commerce, as 'commerce' is defined in the Federal Trade Commission Act, of products for resale on newsstands operated by respondents, do forthwith cease and desist from:

"Receiving, or inducing and receiving, or contracting for the receipt of, anything of value from any of their suppliers as compensation or in consideration for display or promotional services or facilities furnished by or through respondents in connection with the processing, handling, sale or offering for sale of products purchased from any of

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LEGAL RECORDS

their suppliers, when respondents know or should know that such compensation or consideration is not affirmatively offered or otherwise made available by such suppliers on proportionally equal terms to all their other customers competing with respondents in the sale and distribution of such suppliers' products."

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the order to cease and desist as hereby modified, be, and it hereby is, affirmed, and that petitioners be, and they hereby are, commanded forthwith to obey said order and to comply therewith; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that within ninety (90) days after the entry of this decree petitioners shall file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with said order to cease and desist as hereby modified, affirmed and enforced.

Without prejudice to the right of the United States, as provided in Section 5(l) of the Federal Trade Commission Act, to prosecute suits to recover civil penalties for violation of the aforesaid order to cease and desist, hereby modified, affirmed and enforced, this Court retains jurisdiction of this cause to enter such further orders herein from time to time as may become necessary effectively to enforce compliance in every respect with its decree and to prevent evasions thereof.

CHARLES E. CLARK

STERRY R. WATERMAN

United States Circuit Judges

Dated: APR 27 1962

A true copy.

A. Daniel Fusaro

Clerk

EXHIBIT D - MODIFIED ORDER TO CEASE AND DESIST OF THE FEDERAL TRADE COMMISSION

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Paul Rand Dixon, Chairman
Philip Elman
Everette MacIntyre
John R. Reilly

In the Matter of

AMERICAN NEWS COMPANY and THE UNION NEWS COMPANY

DOCKET NO. 7396

MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Second Circuit a petition to review and set aside the order to cease and desist issued herein on January 10, 1961; and the court on February 7, 1962, having filed its decision, and on April 27, 1962, having entered its final decree modifying and as modified, affirming and enforcing said order to cease and desist; and the United States Supreme Court having denied a petition for certiorari filed by respondents;

NOW, THEREFORE, IT IS HEREBY ORDERED that the aforesaid order to cease and desist be, and it hereby is modified, in accordance with the said final decree of the Court of Appeals, to read as follows:

IT IS ORDERED that the respondents, The American News Company and The Union News Company, corporations, their officers, employees, agents or representatives, directly or through any corporate or other device, in or in connection with the purchase

in commerce, as "commerce" is defined in the Federal Trade Commission Act, of products for resale on newsstands operated by respondents, do forthwith cease and desist from:

> Receiving, or inducing and receiving, or contracting for the receipt of, anything of value from any of their suppliers as compensation or in consideration for display or promotional services or facilities furnished by or through respondents in connection with the processing, handling, sale, or offering for sale of products purchased from any of their suppliers, when respondents know or should know that such compensation or consideration is not affirmatively offered or otherwise made available by such suppliers on proportionally equal terms to all their other customers competing with respondents in the sale and distribution of such suppliers' products.

By the Commission.

Joseph W. Shea,
Secretary.

ISSUED: April 13, 1964

United States of America

vs. 70 Civ. 5770

Ancorp National Services, Inc.

July 30, 1971
2:15 P.M.
New York, N.Y.

BEFORE: HON. HAROLD R. TYLER, JR., D.J.

* * * * * * * * * *

APPEARANCES:

FOR THE PLAINTIFF:

ALAN B. MORRISON, Assistant U.S. Attorney.

FOR THE DEFENDANT:

Eugene Frederick Roth, Esq.

* * * * * * * * * *

DECISION OF THE COURT

THE COURT: Well, now, here is my ruling:

I am going to deny your motion, as frankly anticipated, because I feel that under the present statutory set-up that the commencement of this suit followed strictly the procedures permitted by Section 56 of Title 18 of the U.S. Code and that there is nothing in Section 45-L of the statute that dimishes or defeats that conclusion.

Therefore, it seems to me that Mr. Morrison is clearly right, that your argument really reduces itself to this naked proposition: that we should go back to the days

before the law was revised to read as it now does, most particularly in those two statutory sections.

Furthermore, there is absolutely no serious statutory problem, nor is there any serious due process problem because the question of the penalties, if, to what extent they are to be litigated at all, are to be litigated in the United States District Court, I am at a loss to see any statutory or constitutional problem or infirmity whatsoever.

Let me conclude that I disagree most respectfully with your reading of Judge Caleb Wright's quoted language at page 4 of Ancorp's brief. It is, it seems to me, the clearest kind of dictum.

And I am also inclined to agree with Mr. Morrison that it is apparently a misconception of the entire statutory framework. I can only assume that he was thinking of something different when he wrote that sentence or, to put it another way, it to me totally ignores the full thrust of the provisions of Section 56, and it is precisely on the basis of Section 56 that the Commission certified this case to the Attorney General and then the Attorney General, as the statute requires under Section 56, directed that this suit be filed to assess and collec penalties.

Therefore, the motion to dismiss this case

as prematurely brought is denied and the other branch or alternative branch of this motion to stay the motion pending further proceedings before the Federal Trade Commission is also denied.

Now, with all due respect, Mr. Roth, I am constrained to deny your application for an interlocutory appeal under the provisions of 1292 of Title 28 because, first of all, I do not think there is a substantial issue on appeal; and second of all, I am at a loss to see how an appeal on this issue would in any way expedite the conclusion of this litigation, which I must assume is substantial in the views of your client as well as of the United States.

So I am in the unhappy personal position of having to tell you that I deny all branches of relief requested by your client here today.

CAR:mm
70-3809

PLAINTIFF'S INTERROGATORIES AND REQUEST FOR DOCUMENTS
(Filed November 15, 1971)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-v-

ANSCHP NATIONAL SERVICES, INC.,

Defendant.

INTERROGATORIES AND REQUESTS FOR DOCUMENTS

70 Civ. 3770 MEY

S I R :

PLEASE TAKE NOTICE that plaintiff, by Whitney North Seymour, Jr., United States Attorney for the Southern District of New York, pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, hereby requests defendant herein to answer under oath the following written interrogatories and requests for documents, separately and fully in writing, within thirty days after the date of service of this notice. The answers hereto should include all information known up to the date of the verification thereof.

The term "defendant", as used herein, shall mean Ansorp National Services, Inc., and all of its predecessors in interest, and all of its subsidiary or affiliate companies, including but not limited to the American News Company and the Union News Company.

70-3809

1. State whether the defendant ever entered into a contract or agreement, whether written or oral, with publishers of newspapers, under the terms of which the publishers agreed to pay to defendant a rebate, price allowance or other compensation in connection with defendant's promotion or sale of newspapers on its newsstands.

2. If the answer to Interrogatory 1 is in the affirmative:

A. State the names of all such newspapers.

B. State the terms of each such contract or agreement, including:

(i) the date when such contract or agreement was first made, the dates of each subsequent modification, and the date of the termination thereof, if any;

(ii) the names of the persons who represented the newspapers and the names of defendant's agents during all negotiations relating to the contracts or modifications thereof;

(iii) the date and amount of all payments between 1959 and 1969, inclusive, made by the newspapers pursuant thereto;

(iv) the nature of any services provided by defendant in connection with the payment of such rebate, price allowance or other compensation; and

(v) what affirmative actions defendant took to determine whether said newspaper publishers were offering any such payments to other owners or operators of newsstands.

3. With respect to each newspaper named in answer to Interrogatory 2, for each of the years 1959 to 1969, inclusive, state:

A. the price paid by defendant per copy of the daily and Sunday or week-end editions of the newspaper;

B. the "cover price" printed on the first page of each copy of the daily and Sunday or week-end editions of the newspaper;

C. the price defendant charged the public for each copy of the daily and Sunday or week-end editions of the newspaper. If there were any changes in any of the prices during any of the years, state the dates when such changes became effective. If there were differences in price in different distribution areas, the answer to this interrogatory should include the requested information with respect to all such areas, plus a general geographic description of the different areas.

4. For each of the newspapers named in response to Interrogatory 2, for the years 1959 to 1969, inclusive, state the annual number of copies of (a) daily and (b) Sunday or week-end copies sold by defendant. If there were differences in prices in different distribution areas, the answer to this interrogatory should include the requested information with respect to all such areas, plus

a general geographic description of the different areas.

5. State the effective dates of all wage increases paid by defendant to its newsstand employees during the years 1959 to 1969, inclusive.

6. If, between 1959 and 1969, inclusive, defendant's newsstand employees were on strike, state the dates during which defendant's newsstands were closed as a result thereof.

You are hereby reminded that, pursuant to Rule 26(e)(2) of the Federal Rules of Civil Procedure, you are under a duty seasonably to amend your responses to the foregoing interrogatories if you should obtain information from which you would know that a prior response was incorrect when made, or from which you would know that the prior response, although correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

REQUESTS FOR DOCUMENTS

You are hereby requested to produce, at 10:00 o'clock, A.M., on the 13th day of December, 1971, in Room 319, United States Court House, Foley Square, New York, New York, the following documents, or your copies thereof, in the event that the originals are not in your possession or under your control, for inspection and copying by the plaintiff.

A. All contracts or agreements referred to in response to Interrogatory 1.

B. All notes, letters, memoranda or other writings describing or setting forth the terms of the contracts or agreements, whether oral or written, referred to in response to Interrogatory 1.

C. All memoranda, letters, notes or other writings prepared by or at the behest of Morris Strassman, between 1959 and 1969, inclusive, relating to rebates, price allowances or compensation for services paid to defendant by newspaper publishers.

D. All memoranda, letters, notes or other writings prepared by or at the behest of Herbert Frielen, between 1959 and 1969, inclusive, relating to rebates, price allowances or compensation for services paid to defendant by newspaper publishers.

E. All computations, notes, documents and other writings prepared by Vince Mineo relating to the sale of newspapers before and after the abrogation of the price allowance agreement of 1969, including but not limited to the matters as to which Mr. W. A. McCullough testified during a deposition conducted on August 17, 1971 on pages 46 through 48 thereof.

F. All leases covering defendant's

[redacted]

so sell newspapers or other periodicals.

Dated: New York, New York

November , 1971

[redacted]
United States Attorney for the
Southern District of New York,
Attorney for the Plaintiff
United States of America

By: _____
[redacted]
Assistant United States Attorney

To: Eugene F. [redacted], Esq.
Attorney for Defendant
230 Park Avenue
New York, New York [redacted]

DEFENDANT'S AMENDED ANSWERS TO INTERROGATORIES
(Filed April 17, 1972)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

ANCORP NATIONAL SERVICES, INC.,

Defendant.

70 Civ. 5770 HRT

AMENDED ANSWERS TO INTERROGATORIES

---

propounded by the plaintiff (amended and superseding answers under date of March 2, 1972), states, on information and belief, (the paragraph numbers below refer to paragraph numbers of the plaintiff's interrogatories).

1. The defendant entered into certain arrangements with newspapers for price allowances by way of credits and payments.

2.A. The names of the newspapers (1959 through 1969) are:

New York Times ("Times")
New York Daily News ("Daily News")
New York Post ("Post")
Wall Street Journal
El Tiempo
Newark Star Ledger
New York Amsterdam News
New York Column
Harrisburgh Patriot

B. Certain of the amounts and credits are set forth on Exhibits 1 and 2 annexed hereto; details as to certain other sums credited or paid prior to or during the dates specified on Exhibits 1 and 2 are not presently available and will be supplied at a later date.

The credits or payments were made by the Times, Post and Daily News to compensate for maintainance of prices in out-of-town locations and with consideration for the unique costs and status of the defendant including, among other things, hours of operation and other special costs connected with the unique requirements of defendant's operations, these being price allowances notwithstanding any other designations which at any time may have been attached thereto at the instance of the publications or otherwise.

The defendant issued requests to its suppliers as set forth in a letter dated October 24, 1962 (Exhibit 3) and instructions to executives dated March 8, 1963 (Exhibit 3(a)) and it was not feasible for the defendant to take further steps with respect thereto nor was the same necessary in view of the unique status of the defendant and its reliance on the direct or implied representations by the newspapers that the payments were legal and non-discriminatory in the circumstances.

3.A.and B. The prices paid by the defendant per copy, exclusive of the credits and payments referred to above, for daily and Sunday or weekend editions and the cover prices thereof are set forth on Exhibit 4 attached hereto (per 100 copies).

C. The defendant charged the cover price for such newspapers except that there may have been some isolated instances contrary to established policy of the defendant and subject to possible changes near the end of 1969 for out-of-town papers.

4. Annual sales by copies for the Times, Daily News and Post are set forth on Exhibit 4(a) hereto.

5. The effective dates of all wage increases paid by

the defendant to its newsstand employees during the period 1959 through 1969 are set forth on Exhibit 5 attached hereto. 83a

6. The dates during which the defendant's newsstands were closed as a result of strikes are as follows:

(a) During the period from January 2, 1960 to January 14, 1960, the unions having jurisdiction over the newsstands enumerated in 5(a) and (b) of Exhibit 5 were on strike.

(b) During the period January through March 1963.

(c) During the period from January 20, 1969 to March 28, 1969, the unions having jurisdiction over the newsstands enumerated in 5(a) of Exhibit 5 were on strike.

Dated: New York, New York
April , 1972

EUGENE FREDERICK ROTH, ESQ.,
Attorney for Defendant
230 Park Avenue
New York, New York 10017
(212) 686-8030

TO: WHITNEY NORTH SEYMOUR, JR.,
United States Attorney for the
Southern District of New York
United States Court House
Foley Square
New York, New York

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

VINCENT MINEO, being duly sworn, deposes and says;

That he is the Chief Clerk of the Bookkeeping Division of Ancorp National Services, Inc., the defendant in the above entitled action; that he has read the foregoing answers and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matter he believes it to be true.

Vincent Mineo

Sworn to before me this
day of April, 1972.

Notary Public

Allowance Payments

	1961	1962	1963	1964	1965	1966	1967	1968	1969	
New York Times	16396-	25056-	21288-	31046.40	31046.40	31046.40	31046.40	31046.40	5174.40	
New York News				15000-	24500-	26000-	26000-	26000-	4333-	
New York Post				400-	600-	600-	600-	600-	300-	
Wall Street Journal Dow Jones						1927.72	1998.03	2398.28	1557.89	
							6000-			

EXHIBIT 1 - ALLOWANCE PAYMENTS

EXHIBITS ANNEXED TO THE FOREGOING AMENDED ANSWERS

ALLOWANCES ON

OTHER NEWSPAPERS

EXHIBIT 2.

	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969
						Sunday Only	"	Daily + Sun.	Daily + Sun.	"	Daily + Sun.
EL TIEMPO						13191	18929	94685	112003	12887	25730
NEW YORK HISTENDAM HERALD							17607	16271	17307	9644	9628
NEW YORK JOURNAL										2547	5377
NEWARK STAR-LEDGER	49784	50036	69110	78499	25909	45409	50479	49963	59041	70479	78062
HARRISBURG PATRIOT						41581	47038	45529	46021	46758	46946

EXHIBIT 2 - ALLOWANCE PAYMENTS ON OTHER NEWSPAPERS

EXHIBIT 3 - LETTER DATED OCTOBER 24, 1962 FROM AMERICAN NEWS CO.

"COVERING A CONTINENT"

The American News Company INC.

131 VARICK STREET, NEW YORK 13, N. Y.

OF THE
ESIDENT

October 24, 1962

Gentlemen:

We are sure that you are aware that we have at all times sought to treat our suppliers as equitably as possible in accordance with legal requirements and with consideration for the necessary minimum requirements for the operation of our business.

We are sure that you are aware of the special character of our newsstand operations and the conditions which we must meet in order to be able to continue in business to provide the kind of service we are under obligation to offer, with some expectation of profit in the interests of our many stockholders to whom we owe a duty as a publicly held company.

We would like to take this occasion to mention particularly that any discounts, rebates or promotional allowances for services or facilities which you may offer to us should be offered to all of your newsstand customers on proportionally equal terms where they are in competition with our stands. We ask that you bear this in mind particularly and promptly apprise us of any instance in which this may not be applicable.

We will assume that any offers to grant us any such discounts, rebates or allowances will constitute a representation by you to us that they are equal or proportionally equal to those offered to newsstands which are competing with us; and that this will apply to the continuance in the future of any such payments to us.

We suggest that if you have any questions regarding this situation you communicate with your own counsel or with the Federal Trade Commission to obtain their views.

We trust that we may be of service to you on a mutually profitable basis and in compliance with our legal requirements.

Sincerely,

Herbert Frilen

Herbert Frilen
EXECUTIVE VICE PRESIDENT

EXHIBIT 3

EXHIBIT 3 - LETTER DATED OCTOBER 24, 1962 FROM AMERICAN NEWS CO.

"COVERING A CONTINENT"

The American News Company INC.

131 VARICK STREET, NEW YORK 13, N. Y.

OF THE
ESIDENT

October 24, 1962

Gentlemen:

We are sure that you are aware that we have at all times sought to treat our suppliers as equitably as possible in accordance with legal requirements and with consideration for the necessary minimum requirements for the operation of our business.

We are sure that you are aware of the special character of our newsstand operations and the conditions which we must meet in order to be able to continue in business to provide the kind of service we are under obligation to offer, with some expectation of profit in the interests of our many stockholders to whom we owe a duty as a publicly held company.

We would like to take this occasion to mention particularly that any discounts, rebates or promotional allowances for services or facilities which you may offer to us should be offered to all of your newsstand customers on proportionally equal terms where they are in competition with our stands. We ask that you bear this in mind particularly and promptly apprise us of any instance in which this may not be applicable.

We will assume that any offers to grant us any such discounts, rebates or allowances will constitute a representation by you to us that they are equal or proportionally equal to those offered to newsstands which are competing with us; and that this will apply to the continuance in the future of any such payments to us.

We suggest that if you have any questions regarding this situation you communicate with your own counsel or with the Federal Trade Commission to obtain their views.

We trust that we may be of service to you on a mutually profitable basis and in compliance with our legal requirements.

Sincerely,

Herbert Frilen

Herbert Frilen
EXECUTIVE VICE PRESIDENT

EXHIBIT 3



HENRY GARFINKLE
President

"COVERING A CONTINENT"

EXHIBIT 3A - LETTER DATED MARCH 8, 1963 FROM AMERICAN NEWS CO. 88a

The American News Company INC.

131 VARICK STREET, NEW YORK 13, N. Y.

March 8th, 1963

TO ALL OFFICERS AND EXECUTIVES
OF THE AMERICAN NEWS COMPANY AND
THE UNION NEWS COMPANY:

The following is the language of a Cease and Desist Order issued against us by the Federal Trade Commission as modified, affirmed, and enforced by the United States Court of Appeals for the Second Circuit:

"IT IS ORDERED that the respondents, The American News Company and The Union News Company, corporations, their officers, employees, agents or representatives, directly or through any corporate or other device, in or in connection with the purchase in commerce, as 'commerce' is defined in the Federal Trade Commission Act, of products for resale on newsstands operated by respondents, do forthwith cease and desist from:

"Receiving, or inducing and receiving, or contracting for the receipt of, anything of value from any of their suppliers as compensation or in consideration for display or promotional services or facilities furnished by or through respondents in connection with the processing, handling, sale, or offering for sale of products purchased from any of their suppliers, when respondents know or should know that such compensation or consideration is not affirmatively offered or otherwise made available by such suppliers on proportionally equal terms to all their other customers competing with respondents in the sale and distribution of such suppliers' products."

All Officers and Executives must familiarize themselves with the substance and import of this order and must report promptly any information from any source whatsoever which might indicate the existance of a present violation or the danger of a potential violation of the above order with respect to any contracts, programs, plans, or agreements to which The American News Company or The Union News Company is a party.

Very truly yours,

Henry Garfinkle
President

HG/g
cc: Mr. Herbert Frilen, Executive Vice President
Mr. Morris Strassman, Executive Vice President
Mr. Nathan Kellerman, Vice President
Mr. John A. Murphy, Vice President
Mr. S.J.Van Brunt, Vice President
Mr. William J. Bliss, Secretary and General Attorney
Mr. M.J. Kilfeather, Treasurer
Mr. Joseph M. Christie, Assistant Vice President
Mr. Robert C. Dennis, Assistant Vice President
Mr. Ralph Florea, Assistant Vice President
Mr. William A. McCollough, Assistant Vice President
Mr. James R. Farley, Assistant Secretary
Mr. Joseph P. Kiernan, Assistant Secretary
Mr. Henry H. Spire, Assistant Secretary
Miss Mildred L. Morrison, Assistant Treasurer

COST AND RETAIL PRICES

PRICES PER HUNDRED

EXHIBIT 4

	1959	1960	1961	1962	1963	1964	1965	1966	1967	1968	1969
DAILY											
NEW YORK TIMES											
COST											
RETAIL											
NEW YORK NEWS											
COST	3.50	3.50	3.50	3.50	3.50	5.32	5.32	5.32	6.08	6.08	6.08
RETAIL	5.00	5.00	5.00	5.00	5.00	7.00	7.00	7.00	8.00	8.00	8.00
NEW YORK POST											
COST	7.60	7.60	7.60	7.60	7.60	7.60	7.60	7.60	7.60	7.60	7.60
RETAIL	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00
WALL ST JOURNAL											
COST	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50	7.50
RETAIL	10.00	10.00	10.00	10.00	10.00	10.00	10.70	10.00	10.00	10.00	10.00
SUNDAY											
NEW YORK TIMES											
COST	19.50	22.00	23.00	23.00	23.00	23.00	23.00	23.00	24.50	27.00	27.00
RETAIL	25.00	30.00	30.00	30.00	30.00	30.00	30.00	35.00	35.00	50.00	50.00
NEW YORK NEWS											
COST	11.00	11.00	11.00	11.00	11.00	16.25	16.25	16.25	16.25	16.25	16.25
RETAIL	15.00	15.00	15.00	15.00	20.00	20.00	20.00	20.00	20.00	20.00	20.00
NEW YORK POST											
COST	7.50	7.50	7.50	7.50	7.50	11.75	11.75	11.75	11.75	11.75	11.75
RETAIL	10.00	10.00	10.00	10.00	10.00	15.00	15.00	15.00	15.00	15.00	15.00

EXHIBIT 4 - COSTS AND RETAIL PRICES PER HUNDRED

EXHIBIT 4A - SUMMARY OF COPIES PURCHASED

SUMMARY

PURCHASE BY COPIES EXHIBIT 4(a)

	1 DAILY	2 SUNDAY	3 TOTAL	4
NEW YORK TIMES				
1959 TO 1965	RECORDS NOT AVAILABLE			
1966	7103726	281814	7385600	
1967	8790312	338752	9129064	
1968	9239275	377446	9616721	
1969	6029390	330767	6360157	
TOTAL	31162703	1328839	32491542	
NEW YORK NEWS				
1959 TO 1965	RECORDS NOT AVAILABLE			
1966	15015906	661398	15677304	
1967	15282825	689702	15972527	
1968	16032679	816261	16848940	
1969	17336257	962479	18298736	
TOTAL	63667667	3129840	66797507	
NEW YORK POST				
1959 TO 1965	RECORDS NOT AVAILABLE			
1966	7553463	410232	7963695	
1967	10327474	530799	10858273	
1968	14215253	649446	14864699	
1969	13928862	725966	14654828	
TOTAL	46025052	2316443	48341495	

EXHIBIT 5 - EFFECTIVE DATES OF WAGE INCREASES

5. Effective dates of all wage increases paid by defendant to its newsstand employees during the years 1959 to 1969, inclusive:

(a) Newsstands in Pennsylvania Terminal, Grand Central Terminal, Long Island Railroad, LaGuardia Airport, John F. Kennedy Airport and various hotels in New York City:

January 15, 1960	---	7½¢ per hour
July 15, 1961	---	8 3/4¢ per hour for Clerks 6½¢ per hour for Agents
January 16, 1963	---	5¢ per hour
January 16, 1964	---	5¢ per hour
January 16, 1965	---	3 3/4¢ per hour
January 16, 1966	---	5¢ per hour
January 16, 1967	---	5¢ per hour
January 16, 1968	---	3 3/4¢ per hour
January 16, 1969	---	12½¢ per hour for Clerks 7½¢ per hour for Agents

(b) Newsstands in New York Subway System:

January 15, 1960	---	7½¢ per hour
July 15, 1961	---	8 3/4¢ per hour for Clerks 6½¢ per hour for Agents
April 1, 1963	---	5¢ per hour
April 1, 1964	---	5¢ per hour
April 1, 1965	---	5¢ per hour
May 1, 1966	---	5¢ per hour
May 1, 1967	---	5¢ per hour
May 1, 1968	---	3 3/4¢ per hour
May 1, 1969	---	7½¢ per hour

(c) Newsstands in South Station and Logan Airport, Boston, Mass.:

November 1, 1960	---	3 3/4¢ per hour
May 1, 1961	---	5¢ per hour
May 1, 1962	---	3 3/4¢ per hour
November 1, 1963	---	7½¢ per hour
November 1, 1964	---	5¢ per hour
January 11, 1966	---	5¢ per hour
September 10, 1966	---	5¢ per hour
July 15, 1967	---	5¢ per hour
April 15, 1968	---	5¢ per hour
June 28, 1969	---	12½¢ per hour

(d) Newsstands in North Station, Boston, Mass.:

July 1, 1967	---	10¢ per hour
January 13, 1968	---	10¢ per hour
June 29, 1968	---	5¢ per hour
June 28, 1969	---	5¢ per hour

(e) Newsstands in Boston, Massachusetts Transit Authority System:

October 29, 1960	---	3 3/4¢ per hour
May 1, 1962	---	2½¢ per hour
November 2, 1963	---	2½¢ per hour
May 2, 1964	---	2½¢ per hour
October 31, 1964	---	2½¢ per hour
November 1, 1965	---	5¢ per hour
November 1, 1966	---	5¢ per hour
November 4, 1967	---	5¢ per hour
November 2, 1968	---	7½¢ per hour
November 1, 1969	---	12½¢ per hour

(f) Newsstands in Pennsylvania Terminal, Newark, New Jersey and various newsstands at railroad stations in New Jersey:

May 1, 1960	---	5¢ per hour
November 1, 1961	---	2½¢ per hour
September 1, 1965	---	6½¢ per hour
September 1, 1966	---	6½¢ per hour
September 1, 1968	---	5¢ per hour
September 1, 1969	---	5¢ per hour

(g) Various newsstands in hotels in San Francisco, California:

August 1, 1961	---	10¢ per hour
August 1, 1962	---	7½¢ per hour
August 1, 1963	---	7½¢ per hour
August 1, 1964	---	10¢ per hour
August 1, 1965	---	7½¢ per hour
August 1, 1966	---	7½¢ per hour
August 1, 1967	---	10¢ per hour
August 1, 1968	---	10¢ per hour
August 1, 1969	---	12½¢ per hour

(h) East Side Airlines Terminal Newsstand, New York City:

January 1, 1960	---	5¢ per hour
March 1, 1961	---	6½¢ per hour
September 1, 1962	---	2½¢ per hour
September 1, 1963	---	5¢ per hour
September 1, 1964	---	5¢ per hour
September 1, 1965	---	5¢ per hour
September 1, 1966	---	5¢ per hour
September 1, 1967	---	5¢ per hour
September 1, 1968	---	5¢ per hour
September 1, 1969	---	7½¢ per hour

(i) Park Sheraton Hotel Newsstand, New York City:

June 1, 1959	---	8¢ per hour
June 1, 1960	---	7¢ per hour
June 1, 1961	---	7¢ per hour
June 1, 1962	---	7¢ per hour
June 1, 1963	---	7¢ per hour
June 1, 1964	---	7¢ per hour
June 1, 1965	---	7¢ per hour
June 1, 1966	---	7¢ per hour
June 1, 1967	---	7¢ per hour
June 1, 1968	---	7¢ per hour
December 1, 1968	---	16¢ per hour

(j) Oakland International Airport Newsstand, Oakland, California:

September 18, 1965	---	15¢ per hour
March 19, 1966	---	10¢ per hour
September 17, 1966	---	10¢ per hour
September 16, 1967	---	10¢ per hour
September 20, 1969	---	15¢ per hour
September 19, 1970	---	5¢ per hour

(k) Newsstands in New York Port Authority Bus Terminal, New York City.

May 1, 1969 --- 7½¢ per hour

(Also includes newsstands in Parkchester, Journal Square, 33rd St. PATH, St. George Ferry and South Ferry, N. Y. C.)

(1) Newsstands in Market Street Station, Suburban Station, 30th Street Station, North Philadelphia Station, Sheraton Hotel and Greyhound Terminal, Philadelphia, Pa.:

April 1, 1959	---	6¢ per hour
April 1, 1960	---	6¢ per hour
September 1, 1962	---	6¢ per hour
April 1, 1963	---	3 2/3¢ per hour
September 1, 1963	---	6¢ per hour
April 1, 1964	---	5¢ per hour
December 1, 1964	---	6¢ per hour
September 1, 1965	---	6¢ per hour
September 1, 1966	---	6¢ per hour
September 2, 1967	---	12¢ per hour for Agents
		7½¢ per hour for Clerks
August 31, 1968	---	12¢ per hour for Agents
		7½¢ per hour for Clerks
August 30th 1969	---	12¢ per hour for Agents
		7½¢ per hour for Clerks

PRE-TRIAL ORDER
(Filed March 12, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA,

Plaintiff,

- v -

AMCORP NATIONAL SERVICES, INC.,

Defendant.

PRE-TRIAL ORDER

70 Civ. 5770 DNE

- - - - - - - - - - - - - - - - - - - -x

The attorneys for the parties to this action having appeared before the Court at a pre-trial conference, pursuant to Rule 16 of the Federal Rules of Civil Procedure, the following action was taken:

I. Amendment of the Pleadings

(a) Plaintiff's Amendments:

Paragraph 3 of the Complaint incorrectly sets forth the language of the order of the Federal Trade Commission with respect to the American News Company, as the defendant was known at the time (May 13, 1964) the order became final. The order is correctly reproduced as Exhibit A to the Complaint. Paragraph 3 of the Complaint is hereby amended as follows: the quoted provisions of the order are stricken and replaced by the correctly quoted provisions of the order as it appears at Exhibit A to the Complaint.

(b) Defendant's Amendments:

The following phrase appears at the end of paragraphs SECOND, FOURTH and FIFTH of the Amended Answer: "On account of certain services, expenditures and costs incurred by the defendant in handling * * * publications for the benefit of the * * *. The foregoing phrase in each of the three enumerated paragraphs is hereby deleted and replaced by a period.

In the "EIGHTH" paragraph of the Amended Answer, on the second line from the top of the last page, the words "the Post Co." are hereby deleted. The foregoing is embodied in the defendant's Second Amended Answer.

(c) Defendant's Motion to Dismiss or Stay the Action

On July 30, 1971, the defendant moved before United States District Judge Harold Tyler, Jr., for an order dismissing the complaint or, alternatively, staying the action pending an administrative hearing before the Federal Trade Commission. The defendant contended that the action was prematurely brought because the acts involved related to newspapers, which were not, the defendant alleged, the subject of the original FTC proceeding. The defendant also maintained that this civil penalty action could not be commenced before hearings were held before the Federal Trade Commission with respect to the scope of the order and the defendant's alleged non-compliance therewith. Following oral argument, Judge Tyler dictated a memorandum decision denying both branches of relief sought by the defendant.

II. The parties agreed that the trial of this action should be based upon this order, upon the pleadings as amended and the evidence presented at trial.

III. The parties stipulated that the following facts are not in dispute in this action, each party reserving the right to object to the materiality of any such stipulated fact and to its relevancy to the issues:

(a) Defendant, Nature of its Organization and Business and Operations in Commerce

1. A majority of the shareholders agreed at the

1969, to change the name of their company as of May 1, 1969, to Ancorp National Service, Inc., the defendant in the present action.

2. Defendant Ancorp is a corporation organized and doing business under the laws of the State of Delaware, with its principal office and place of business located at 131 Varick Street, New York, New York.

3. One of defendant's operating divisions is the Union News Division, which was formed after the merger with its wholly-owned subsidiary, The Union News Company, in 1959. During the period 1964-1969, The Union News Division operated a large number of newsstands, which were located primarily at railroad, airport, bus and subway terminals, and in the lobbies of major hotels and office buildings. Most of these stands sell magazines, comic books, paper back books, candy, tobacco products and other items in addition to newspapers.

4. A large number of these newsstands operated in New York City, but they were also located in other parts of New York State and in Alabama, California, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, North Carolina, Pennsylvania, Ohio, Rhode Island, South Carolina, Texas, Virginia, West Virginia and Wisconsin.

5. The sales and profits of the defendant from all its operations from 1959 to 1972 are reflected in its annual reports for those years, the details of which will be deferred until trial.

6. The handling and sale of newspapers, magazines, and other merchandise and products for resale on Union News newsstands has generally been arranged at or through the defendant's main office.

7. The actual distribution of newspapers to Union News outlets is done by the newspaper companies directly and by wholesale distributors. such as Manhattan News, Kings County News Co., Weinberg News Co., and Bay City News Co. in the New York Metropolitan area. In other parts of the United States, the Union News newsstands receive their New York City newspapers primarily from the local wholesaler.

8. Locations for Union News newsstands are generally obtained by or under lease, and are frequently situated in high consumer traffic locations. A customary term of leases between the defendant (as lessee) and the owners of railroad terminals, airports or other companies (as landlords) provides that the Union News company shall sell an enumerated list of products at its newsstands, usually including newspapers, magazines, paperback books, tobacco products and candies. The leases customarily contain other provisions setting forth the obligations of the lessee as to the times and nature of operation of the stands.

(b) Original Commission and judicial review proceedings, and provisions of final order to cease and desist

1. The original proceeding in this matter was instituted by the Commission's issuance of a complaint on February 5, 1959, charging respondents American News and Union News with having violated Section 5 of the Federal Trade Commission Act by inducing and coercing suppliers,

specifying only publishers of magazines, pocket books and comic books to make payments or to grant allowances as compensation for services or facilities furnished in connection with the sale of such suppliers' products on defendant's newsstands, when defendants knew, or should have known, that such payments were not being offered or made available on proportionally equal terms to all customers of such suppliers who were in competition with the defendant. The specification in the complaint did not list newspapers. No charge was directly or indirectly set forth with respect to newspapers and at the hearing before the examiner no evidence was presented regarding newspapers. Evidence was presented with respect to attempting to induce allowances or rebates from cigar suppliers.

2. At the conclusion of the hearing, the Hearing Examiner rendered an initial decision and order dated May 26, 1960. The Examiner's findings related solely to magazines, paperbacks, comic books and cigars. In Conclusion (2), the Hearing Examiner found that

> "Respondents' acts in inducing their suppliers of magazines, pocket books, paperback and comic books to pay something of value as compensation or in consideration for services of facilities furnished by or through Respondents in connection with the processing, handling, sale or offering for sale of said products, when they knew, or should have known, that such compensation was not affirmatively offered or otherwise made available on proportionally equal terms to all other of their suppliers' customers competing with Respondents in the distribution of such products, were and are an unfair method of competition in commerce, and constitute, therefore, as alleged in the complaint, a violation of §5 of the Federal Trade Commission Act.

The hearing examiner ordered the defendant to cease and desist from receiving payments "in connection with the purchase of products * * * for resale on news-stands operated by Respondents

including magazines, pocket books, paperback and comic books, newspapers, cigars, candy, toys and sundry items."

3. In issuing its order to cease and desist on January 10, 1961, the Commission modified the Hearing Examiner's initial decision by deleting the provisions dealing with the "Attempted Coercion of Cigar Manufacturers" for failure of proof, and otherwise modified the product coverage provisions.

4. The Commission's final order provided in part:

* * *

> "...in connection with the purchase in commerce...of products for resale on newsstands operated by respondents, do forthwith cease and desist from:
>
> "Inducing, receiving or contracting for the receipt of anything of value from any of their suppliers as compensation or in consideration for services or facilities furnished by or through respondents in connection with the processing, handling, sale or offering for sale of products purchased from any of their suppliers, when respondents know or should know that such compensation or consideration is not affirmatively offered or otherwise made available by such suppliers on proportionally equal terms to all of their other customers competing with respondents in the sale and distribution of such products."

The final order did not specify any particular products. The final order also used the words "services or facilities furnished", these being the same words used in the order of the Hearing Examiner.

5. On January 17, 1961, copies of the Commission's order were duly served on respondents by registered mail, and on March 14, 1961, respondents filed a petition for review of the Commission's order in the Court of Appeals for the Second Circuit.

6. The Court of Appeals entered its decision modifying and as modified affirming the commission order on February 7, 1962, and its "Final Decree Modifying And, As Modified, Affirming and Enforcing Order To Cease and Desist on April 27, 1962, 300 F.2d 104 (2d Cir. 1962). The modification consisted of including the words "display or promotional" before the words "services or facilities" in the Commission's final order. The court's decision, in parts, reads as follows:

> "IT IS ORDERED that the respondents, The American News Company, and The Union News Company, corporations, their officers, employees, agents, or representatives, directly or through any corporate or other device, in or in connection with the purchase in commerce, as 'commerce' is defined in the Federal Trade Commission Act, of products for resale on newsstands operated by respondents, do forthwith cease and desist from:
>
> Receiving, or inducing and receiving, or contracting for the receipt of, anything of value from any of their suppliers as compensation or in consideration for display or promotional services or facilities furnished by or through respondents in connection with the processing, handling, sale, or offering for sale of products purchased from any of their suppliers, when respondents know or should know that such compensation or consideration is not affirmatively offered or otherwise made available by such suppliers on proportionally equal terms to all their other customers competing with respondents in the sale and distribution of such suppliers' products.
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the order to cease and desist as hereby modified be, and it hereby is, affirmed, and that petitioners be, and they hereby are, commanded forthwith to obey said order and to comply therewith; and
>
> * * *
>
> "Without prejudice to the right of the United States, as provided in Section 5(l) of the Federal Trade Commission Act, to prosecute suits to recover civil penalties for violation of the aforesaid order to cease and desist, hereby modified, affirmed and enforced, this Court retains jurisdiction of this cause to enter such further orders herein from time to time as may become necessary effectively to enforce compliance in every respect with its decree and to prevent evasions thereof."

7. A petition for writ of certiorari for Supreme Court review of said decision and decree of the Court of Appeals for the Second Circuit was filed on July 19, 1962, by respondents. The Supreme Court denied the petition on October 8, 1962 (371 U.S. 824 (1962)).

8. As provided by Section 5(1) of the Federal Trade Commission Act (15 U.S.C. 45(1)):

> "If the order of the Commission is modified... by the court of appeals, and if ... (2) the petition for certiorari has been denied ... then the order of the Commission rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected."

9. No proceedings were instituted for correcting the Commission's order to accord with the said final decree or mandate of the Court of Appeals modifying and affirming the Commission's order. An order to cease and desist in accord with the said Court of Appeals' decree was rendered or issued by the Commission on April 13, 1964, and became final by operation of law on May 13, 1964. Copies of the said final order were served upon the respondents by registered mail on April 17, 1964.

10. The final order to cease and desist has not at any time since May 13, 1964, been modified or set aside, and has at all times since such date been in full force and effect.

(c) New York Times

1. The New York Times Co. publishes, prints, distributes and sells the New York Times (hereafter "the Times"). The New York Times Co. is a corporation organized and

existing under the laws of the State of New York, and has its office and principal place of business at 229 West 43rd Street, New York, New York.

2. Distribution of the newspaper is done directly by company trucks to retail newsstand dealers and operators in a limited area on the west side of New York City, namely, an area West of Fifth Avenue from about 23rd Street to the southern tip of Manhattan Island. The mailing to mail subscribers and to some distant national and foreign accounts is also directly handled by the company. The remainder and major part of the New York Times circulation is done by wholesaler distributors, which obtain their papers directly from the plant at 229 West 43rd Street, from deliveries by N.Y. Times trucks to the plants of suburban wholesalers (within a fifty-mile radius of Columbus Circle at 59th Street and 8th Avenue in New York City), or from deliveries made by common carriers (train, bus, air) to transportation terminals located beyond the fifty-mile zone in other parts of the United States. The New York Times is distributed in virtually all major Eastern and United States Cities.

3. In 1960, the New York Times had a Sunday Edition circulation of over 1,400,000 copies and a weekday circulation of over 1,060,000 copies - the latter more specifically distributed as follows:

New York City Proper	430,000-440,000
New York Suburban	350,000-375,000
Country and International	245,000-280,000

4. For a number of years prior to 1961 the Times made price allowances to the defendant. In 1960 those price allowances were roughly in the amount of $24,000.00 per year. The Times was billed by the Union News Company and began paying Union News Company $2,000 per month in January 1961, and

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continued such payments until August, 1968 when the amount of the payments was increased to $2,597.20 per month.

(d) New York Daily News

1. The New York Daily News is a newspaper published, distributed and sold by the News Syndicate Co., Inc. hereinafter referred to as The News, which has its office and principal place of business at 220 East 42nd Street, New York, New York. The News is a corporation organized and existing under the laws of the State of New York. It is also a subsidiary of the Tribune Co., a corporation organized and existing under the laws of the State of Illinois.

2. The Daily News is distributed to local, suburban and country newsstand dealers and operators in much the same way as the New York Times. The News does more direct distribution than the Times by covering New York's five boroughs and parts of Hudson County, New Jersey and Long Island. Daily News trucks also make direct deliveries to wholesalers located in some suburban areas and in some country areas, such as Albany, New York, and parts of Connecticut and Pennsylvania. Except for mail subscribers, which are directly handled by the News, the rest of the country circulation is done by wholesaler distributors.

3. In 1969, over 2,100,000 copies of the Daily News were circulated daily and approximately 3,000,000 copies on Sunday. A more specific allocation of the weekday circulation was as follows:

New York City Proper	1,200,000
New York Suburban	600,000
County and International	300,000

4. Weekday circulation for 1969 can also be broken down into 6,700 copies to mail subscribers; 200,000 copies to home delivery accounts (255,000 on Sunday), and the remainder to country and newsstand sales. The Daily News is

distributed and sold in most of the major eastern cities including Philadelphia, Boston, Washington, Pittsburgh, Miami Beach and Hartford, and several of these cities have Union News outlets handling this newspaper.

(e) New York Post

1. The third and smallest of New York City's three major daily newspapers is the New York Post, which is published, distributed and sold by The New York Post Co., Inc., hereinafter referred to as The Post. This corporation is organized and existing under the laws of the State of New York and maintains its main office and principal place of business at 75 West Street, New York, New York.

2. Circulation and distribution of the Post is similar to that previously discussed for the New York Times and The News. Deliveries are made directly by the Post trucks to independent and Union News newsstands in Manhattan and the Bronx, in certain areas of Queens and Brooklyn, and to downtown Newark, New Jersey. In almost all other areas, suburban and country, the circulation or delivery of the Post is done by wholesalers.

3. The Post in 1960 had a weekday circulation of about 650,000 copies daily, and a Saturday (or weekend) circulation of over 350,000 copies. Of this total circulation, Union News newsstands took about 70,000 copies daily on weekdays and about 13,000 copies on Saturday.

4. In connection with the circulation of the Post to Union News newsstands located in the suburban and country areas, the Post from 1942 to July, 1964, allowed price concessions to American News of twenty-five cents (.25) per one hundred copies sold in the suburban area, and one dollar (1.00) per one hundred copies sold in the country area, and averaged about $40.00 per week.

IV. Parties' Contentions

A. Plaintiff's Contentions:

(a) Nature of Defendant's Business, etc.

1. Many of the outlets of Union News, because of their size and location, have physical limitations in the number of products they can handle and in the amount of display or front counter space they have available. For this reason, both competitive and non-competitive suppliers vie for such display space on Union News newsstands to attract impulse buyers at such high traffic locations. Display space preference is usually given by the newsstand proprietor either at the direction of the defendant or by arrangement with the supplier, to high volume or high turnover items, such as newspapers, magazines, paperback books, candy and tobacco products. If such products are buried under the counter or hidden in the back of the newsstand, sales of such products by the newsstand diminish substantially.

(b) New York Times

1. The defendant is among the largest of N.Y. Times' retail dealers, with Union News newsstands having taken in 1969 about 43,000 copies of the New York Times daily and about 13,000 on Sunday. Other volume dealers of the New York Times are the retail newsstands, mainly independent or sole proprietorships, located along the Flushing IRT subway line, and the Jamaica IND subway line, which serve large numbers of commuters.

2. Independent dealers located at the Flushing Main Street station, outside of Grand Central Station and in the immediate area of commuter suburban stations compete

with the respective Union News newsstands, located at or in such stations in the distribution and sale of the Times.

3. On January 15, 1960, the defendant entered into a new collective bargaining agreement with a local union representing sales personnel at Union News stands. Shortly thereafter, the defendant sent letters on Union News Company letterheads, dated January 19, 1960, to each of the nine daily newspapers then published in New York City, advising them of Union News' increased labor costs and of Union News' intention to raise the cover price of the daily newspapers by one cent per copy and of the Sunday newspapers by two cents per copy.

4. After a period of negotiation between representatives of the New York Times and of Union News relating to the price Union News would charge the public for copies of the Times, operators of Union News stands ceased displaying or, in some cases, selling the Times. Union News refused to display copies of the Times from approximately May 3 to May 15, 1960.

5. Shortly after the Times was restored to Union News stands, a meeting was called to discuss pricing and other matters of mutual interest to the Times and Union News. A luncheon meeting at the executive cafeteria of the New York Times on West 43rd Street took place on July 8, 1960, attended by Ivan Veit, Times Business Manager in charge of circulation; Nathan S. Goldstein, Times Circulation Director, William Selkowitz, Daily News Circulation Director;

Henry Garfinkle, President of American News, and Morris Strassman, Vice President of Union News.

6. The newspaper company representatives were told that because of the recent signing of a new union contract, Union News had determined that the revenues or rebates it received from the handling and sale of newspapers were insufficient. Garfinkle also indicated that somewhere in the neighborhood of $25,000 in additional revenue per annum was needed from the Times. The Times representative answered that his company, without even considering further increases, was already troubled by the present rebate schedule with Union News, and inquired whether there was another solution to the problem. Garfinkle answered that he did have another suggestion, namely, that the Times buy display sign space that would be made available on Union News newsstands for promoting the New York Times.

7. After Veit reported Garfinkle's proposal to Amory Bradford, then General Manager of the Times, the Times concluded in principle that it would accept some form of a promotional display arrangement with Union News.

8. The Times regarded Garfinkel's proposal as an opportunity to rid itself of the unsatisfactory 'special price concessions' or discounts and rebates that Union News had been receiving since 1950, and from the coercive tactics Union News used in the past to induce such price concessions by taking the New York Times off the display area and keeping the newspaper under Union News' counters.

9. On or about January 5, 1961, the N.Y. Times entered into an agreement for the payment of an allowance to American News of $4.00 a month for each location at which display cards are displayed up to a maximum of 500 locations, for a cost of $2,000 a month. The Times was actually displayed and sold on only 397 of Union News stands (in 1961), most of which were in the metropolitan New York City area.

10. The N.Y. Times was billed and began paying the said allowances of $2,000 per month in January, 1961, and continued such monthly payments until August 1963, when the original agreement was amended to increase the monthly allowance to $4.90 per stand for 526 newsstand locations in New York and in other parts of the country for a total payment of $2,537.20 per month.

11. This change in the allowance payment rate occurred around the same time as the cover price of the newspaper was increased and Union News entered into new union contracts with its clerks. Again, however, the formula agreed to for the rate of allowance payment was based on what Union News representatives said they needed, and not on their actual display of Times posters on 526 newsstands at $4.00 per stand. The Times was not in fact being displayed and sold at 526 newsstands, or even at 500 of such stands.

12. Although the Times knew from field checks by its personnel that it was not receiving promotion and display services at each of the 300 or more Union News newsstands where the New York Times was sold and for which it paid allowances, and notwithstanding the fact that American

News attempted in December 1968, to again increase the monthly allowance payments, the Times continuously paid American News the monthly promotion and display allowance of $2,387.20 from August 1963, until June 1969.

13. Defendant Ancorp wrote the Times on June 3, 1969, requesting payment of the said allowances for February, April and May 1969, and on June 3, 1969, the Times requested additional information on the stands covered by the agreement. It was not until after the article "Control of Newsstands Gives Henry Garfinkle Power Over Publishers" appeared in the Wall Street Journal on July 3, 1969, that the Times wrote the Vice President of defendant Ancorp -

> "This is to notify you that on the advice of counsel the New York Times Company will no longer make any such [display] payments to you and that this arrangement is hereby terminated."

14. It was subsequently determined on July 17, 1969, that allowance payments owing to defendant Ancorp. for 1969, up and through the month of June, could be offset or credited against the $171,012 in accumulated indebtedness Union News owed to the N.Y. Times.

15. Throughout the eight-year period in which American News was paid the aforesaid allowances, the N.Y. Times never offered, otherwise made available or paid to all competitors of Union News promotion or display allowances of the type or under the plan granted or arranged with American News.

16. American News knew, or should have known, that the promotional allowances it received from the N.Y. Times were not offered or otherwise made available to competitors of Union News.

17. Negotiations for the rate increase to $4.90 for 528 outlets occurred just after the Supreme Court denied the petition for certiorari (October 8, 1962), thereby leaving stand the Court of Appeals' final decree affirming and enforcing the Commission's order to cease and desist, and after American News had submitted its Compliance Report to the Commission (February 4, 1963), pursuant to the final decree's provisions.

18. In the Compliance Report (at pp. 9-10), American News described the steps it intended to take to comply with the order as follows:

> "1. All contracts, programs, plans or agreements prohibited by this order have been terminated6/
>
> * * *
>
> 3. We have informed suppliers that any further offers to us of display or promotional allowances will be interpreted by us as constituting a representation that such allowances are proportionally equal to those offered to our competitiors [sic.]. 8/
>
> 4. With respect to any display or promotional allowances actually being received by us, we are requiring suppliers to confirm, in writing full compliance with the order ... 9/
>
> 5. The President ... has directed all officers and executives of The American News Company ... to report promptly any knowledge or notice that might come to them, in any manner whatsoever of a present violation, or the danger of a future or potential violation, of the order.
>
> 6. If ... we should obtain knowledge that a sup-

plier is not offering or otherwise making available on a proportional basis to those competing with us any display or promotional allowance. ... we shall treat the contract as terminated forthwith.

7. If... we should receive notice that a supplier may not be offering or otherwise making available on a proportional basis to those competing with us any display or promotional allowances... we shall, in any case where the supplier refuses to reconfirm compliance, treat the contracts as suspended until such time as he does so.'

19. Attached to the said Compliance Report was a specimen copy of a notice to newsstand suppliers (Ex. 1, p. 109), which provides in part:

"We would like to take this occasion to mention particularly that any discounts, rebates or promotional allowances for services or facilities which you may offer to us should be offered to all of your newsstand customers on proportionally equal terms where they are in competition with our stands. We ask that you bear this in mind particularly and promptly apprise us of any instance in which this may not be applicable.

"We will assume that any offers to grant us any such discounts, rebates or allowances will constitute a representation by you to us that they are equal or proportionally equal to those offered to newsstands which are competing with us; and that this will apply to the continuance in the future of any such payments to us.

20. American News was aware of the final order's provisions requiring prudence or reasonable care to be exercised for determining whether promotion allowances it received from suppliers were being offered or made available to competitors.

21. At the time of negotiating the allowance rate increase with the Times, attention or consideration was not given by either American News or the Times to the offering

or availability of such an allowance program, or a proportional one, to Union News' competitors. The Times has no record of any communication from American News, nor was any oral inquiry made by American News, or any officer or representative thereof, as to whether such allowances were granted or made available to competitors. Neither was the N.Y. Times notified at any time by American News or Union News that they could not accept such allowance payments unless they were equally or proportionally offered or given to newsstand dealers competing with Union News in the distribution and sale of the New York Times.

22. Defendant Ancorp, therefore, violated and continued to violate the order to cease and desist throughout the period from May 13, 1964 (the date the order became final) until termination of the agreement in June, 1969.

(c) New York Daily News

1. In New York City, deliveries are made by The News trucks to each Union News newsstand on regular customer routes of the Daily News. On the route covering Grand Central Station, for example, the Daily News was and is delivered to each of the Union News and other newsstands and "hustler" operations in this area.

2. There is a high degree of competition between Union News and other newsstands in the Grand Central Station area in the distribution and sale of the Daily News. Sources of competition include the 19 or more newsstands of Union News located in Grand Central and in the Commodore Hotel connected with Grand Central, and the many newsstands of other dealers located in the Roosevelt and Biltmore Hotels and in the Pan Am Building, which also are connected with this rail

terminal, and those independent stands located just outside of the Grand Central terminal.

3. There is also substantial competition in the sale of this newspaper between Union News' outlets in suburban stations and independent newsstands located in immediate proximity of such Union News outlets.

4. At a meeting held in the executive dining room of the New York Times Building at West 43rd Street in New York City in early July of 1960, attended by William Welkowitz, then Circulation Director of the New York Daily News, representatives of Union News first broached the subject of a placard display arrangement for the promotion of newspapers, The News included.

5. There is no evidence to indicate that any change was made by The News in commissions or rebates paid to Union News for the ensuing three years. On December 4, 1963, the Vice President of Union News wrote The News:

> As we discussed over the telephone yesterday, the cost price to us of $15.25 per hundred for the Sunday Edition of the N.Y. News is out of line and is not acceptable to us.
>
> As you suggested, we would like to sit down and talk this over with you as quickly as possible. Please let me know when it will be convenient for us to meet on this serious situation.

6. Complaints by Union News that The News' "... wholesale rate to them was too high and that they had to have some type of assistance ..." continued during early 1964. Discussions between these two companies apparently shifted during mid - 1964 from increasing commissions to a program for the payment of promotion and display allowances.

7. On or about September 22, 1964, The News entered into an agreement for the payment of an allowance to Union News of $500 per week for promotion services. The payments were to be made retroactive to June 1, 1964. The promotion services to be performed by Union News under the agreement were the installation and maintenance on or at its newsstands of sign holders and promotional placards furnished by The News.

8. The News' flat payment of $500 per week, however, did not seem to be based on any formula or on any particular number of Union News outlets which were to participate under the allowance program. But it was firmly understood that newsstands of Union News in New York City as well as in other parts of the United States were covered by the said allowance program.

9. From time to time, it came to the attention of The News that some Union News newsstands were not displaying the placard holders and Daily News advertising materials. Nevertheless, The News continuously paid American News the $500 per week (or $2,000 per month) display allowance from June, 1964, until March, 1969 except for a three-week period in September and October, 1968, when The News was shut down by a labor strike.

10. In late 1968, The News refused to accede to an attempt to unilaterally raise the allowance from $500 to $600 per week in late 1968 and early 1969. On August 4, 1969, The News terminated the said $500 allowance program by writing Union News as follows:

> "This is to confirm that The News, on advice of counsel, will not pay the weekly invoices submitted by you for advertising services dated March 3, 1969 and each week thereafter.

11. The News did not at any time during the effective period of its agreement with Union News for the payment of a $500 per week allowance for promotion and display services offer or make available an equivalent or proportional display allowance program to any other Daily News customer.

12. American News knew, or should have known, that the allowance program it worked out with The News in 1964, as an alternative to The News' payment of higher commissions, was not offered or made available to newsstand dealers competing with Union News newsstands in the distribution and sale of the Daily News.

13. American News, in entering into the said allowance agreement, was aware of its obligations under the final order to make reasonable efforts to determine or learn whether the Daily News allowance it received was offered or made available to competitors. The News, however, has no record of any communication or inquire by American News as to whether the said allowance was so offered or made available. The News never received an inquiry or notice from, or was advised by American News, or any officer or representative thereof, of its inability to enter into such allowance arrangements unless The News made such allowances available to competitors on proportional or equal terms.

14. Defendant Ancorp therefore, violated and continued each day to violate the order to cease and desist from June 1, 1964, until termination of the display allowance agreement by the News on March 2, 1966.

(d) New York Post

1. By letter dated July 22, 1964, the N.Y. Post notified defendant Ancorp that it was terminating its payment of the rebates as well as its promotional allowances, hereinafter described.

2. In May, 1964, Union News representatives began to press the Post for increased revenues or commissions for handling the Post on Union News newsstands. Union News' purported increased merchandising cost of $5.75 was offered by Union News representatives as the basis upon which it sought to have the Post increase its commission rate.

3. Further pressure for an upward adjustment in commissions was applied by Union News in withholding the sum of around $44,000 owing to the N.Y. Post. Union News was told by the Post on or about June 1, 1964, that it was unable to give Union News additional commissions without doing the same for other news dealers because of the illegality of such an arrangement.

4. It was in this same conversation that the discussion turned to a promotional allowance program, instead of a higher commission, to offset Union News' increased $5.75 merchandising cost. Union News was told that the Post might be willing to pay an allowance of about $500 per year.

5. On or about July 1, 1964, the Post agreed to pay Union News $50.00 per month ($600 per year) for it to distribute and install on its newsstand postcards or posters and for other advertising services to be later determined.

The agreement covered the posting of postcards or posters anywhere where Union News had a stand and while it was assumed that the posters would be put on Union News' stands where the Post was distributed in New York and New Jersey, the posters could be placed by Union News on its stands outside of New York City.

6. From the inception of this promotion allowance plan on July 1, 1968, until its termination in June, 1969, the Post continuously made monthly payments of $50.00 to Union News. Union News attempted in late 1968 and early 1969 to arbitrarily increase the $50 allowance to $75, but the N.Y. Post refused to adopt the increase in payments.

7. In terminating its allowance agreement on July 22, 1969, the Post wrote defendant Ancorp:

> We have been informed by counsel for the Federal Trade Commission that the promotional allowances and rebates which have been paid to the Union News Company may be in violation of the Robinson-Patman Act.
>
> Accordingly, such payments will terminate herewith.

8. The only services Union News performed for its $50 per month allowance for five years was putting up the Post's 13 posters or display cards and, according to the Business Manager of the Post, to be "available" when, and if, needed. During the period when the promotion allowance agreement was in effect, the Post had little, if any, control or knowledge of the advertising services performed for it by Union News. The first posters after the allowance program became effective, and 12 other sets of posters thereafter, were sent by the Post directly to the main Union News office at 131 Varick Street, New York, New York, for distribution

and Hanley on its newsstands. The Post had no record or information as to where, or even whether, the posters were distributed and put up on Union News outlets.

9. During the five years that the $50 per month allowance agreement was in effect, the Post never once offered or made such allowances available to any other dealer. No representative of Union News at any time indicated to the Post that the said allowance payments should be made available to other dealers distributing and selling the Post.

10. From the inception of this allowance program in July, 1964, American News knew, or should have known, that such allowances would not be offered or made available by the Post to all of its dealers in competition with Union News. The Post was never asked by American News whether it was making such allowances available to competitors, notwithstanding the representations made in its Compliance Report to the Commission. American News never notified or advised the Post that it could not accept or receive such allowance payments if its competitors did not receive proportionally equal allowance treatment from the Post.

11. Defendant Ancorp, therefore, violated and continued to violate the order to cease and desist, daily, from consummation of the agreement with the Post on July 1, 1964, until its termination on July 22, 1969.

(c) Other newspapers still extant

1. Between the years 1964 (when the F.T.C. order became final) and 1969, the American News Company entered into agreements or failed to abrogate existing agreements with certain newspapers, in addition to those named in the complaint, under the terms of which the publishers of said newspapers agreed to pay American News a rebate, price

allowance or other compensation in connection with American News promotion or sale of said newspapers on its stands. The names of the newspapers and the amounts of compensation (in dollars) received by American News are set forth in the table below:

	1964	1965	1966	1967	1968	1969
Wall Street Journal			6,000	6,000		
El Tiempo	131	189	946	1,130	1,338	2,082
Newark Star Ledger	654	500	494	494	7,064	7,437
New York Amsterdam News		176	162	473	746	766
New York Column					352	521
Harrisburg Patriot	415	412	415	406	407	407

2. Representatives of American News induced publishers of the newspapers listed in the foregoing table to enter into said agreements or to continue payments under the terms of such agreements. The consideration offered by American News was a combination of the following:

(a) prominent locations and display on Union News stands,

(b) sale of the newspapers at its cover price, and

(c) display of such promotional materials at Union News stands as the newspaper furnished to the newsstands.

3. In no case did American News inform the newspaper publishers that such agreements were prohibited under the terms of an F.T.C. order unless the newspapers affirmatively offered to enter similar agreements with

proportionally equal terms with all their other customers.

4. In no case did any of the newspaper publishers affirmatively offered to all their other customers route or price allowance agreements with terms proportionally equal to those in their agreements with American News.

5. In no case did American News representatives inquire of any of the newspapers publishers whether similar agreements had been offered to their other customers.

6. American News was in continuous violation of the F.T.C. order with respect to the receipt of payments from each of the newspapers as set forth in the table in ¶1, supra.

(f) Defunct New York City newspapers

1. Each of the following defunct New York City newspapers -- the Herald-Tribune, the Journal-American, the World-Telegram & Sun, and the Daily Mirror -- which ceased publication, respectively, on April 24, 1966, April 24, 1966, April 23, 1966 and October 30, 1963, were repeatedly asked by representatives of American News to enter into agreements similar to those American News successfully negotiated with the Times, the News and the Post.

2. Of the newspapers listed in 1, supra, only the Herald Tribune entered into such an agreement. At some time prior to 1954, American News and the Herald-Tribune agreed that, for a consideration of $3,000 per year, the Herald Tribune would have the right to furnish placards and metal frames to Union Newsstands, where promotional material would be displayed. The agreement remained in effect through the time of the Herald Tribune's demise.

3. American News did not notify the Herald-Tribune of the terms of the F.T.C. order; did not inquire as to whether the Herald Tribune had affirmatively offered similar contracts with proportionally equal terms to all its other customers and, in fact, the Herald Tribune had not

made such offers to all its other customers.

4. American News was in continuous violation of the F.T.C. order with respect to its receipt of payments from the Herald Tribune in accordance with the agreement described in 2, supra.

Defendant's Contentions:

1. This action is for a penalty and is punitive in nature. Accordingly, the burden of proof on the part of the government approximates that of a criminal case requiring proof of every element by the clearest and most convincing evidence.

2. None of the payments were in fact "in consideration for display or promotional services or facilities" as required by the Commission's final order as modified by the Court of Appeals and to the extent that they were denominated otherwise, they were so designated at the request and pursuant to a plan conceived by the Times for its own purposes and the defendant was induced by the Times to designate long previously made price allowances.

3. The defendant took any steps which might have been required in the circumstances to assure that any alleged "competitors" would be provided with "proportionally equal" considerations. In any event it was neither necessary nor practical to proportionalize since there were no competitors on the same functional basis as the defendant which included:

(a) The maintenance of cover prices in various out-of-town locations for the New York newspapers so that they could compete favorably with local newspapers.

(b) The requirements and operations of the defendant relating to hours of maintenance of stands, character of the stands, union labor requirements, items sold and methods of collection and accounting.

(c) The Times was secretly making payments or allowances prior to 1960 to other operators of certain terminal stands proportionally in excess of those paid to the defendant.

4. While Judge Tyler held that the failure of the Commission to hold a hearing before commencement of this action could not inhibit the commencement of this action, he did not rule that penalties should be assessed for allowances or payments made prior to hearing before the Commission in these circumstances; this action being penal in form, the Commission should not be allowed to assess damages involving entirely different matters from those presented as the basis for the original order without at least a hearing before it.

5. The record will disclose not only that there is no damage to the public but that there are no damages to any party who might by any standards be deemed to be a competitor. The newsstand business of the defendant declined steadily as against his competitors over the years during which the order was in effect and the payments received were not in excess of the benefits received by the newspapers from the maintenance of out-of-town prices alone. In this connection, we believe the Court should consider the

constant decline in the financial condition and earnings of the defendant in contrast to the claims of bigness heretofore asserted against the defendant.

6. The Court is asked to consider that no action has been brought by the Commission against the newspapers which did not terminate the arrangements until after the Commission's investigation with respect to the matters referred to in the complaint.

7. The Court is asked to consider facts indicating that in this instance the Commission acted in concert with the newspapers and in doing so was unwittingly carrying out a plan to maintain prices both in the metropolitan New York area and in out-of-town areas and that in this proceeding the Court is being called upon to assist the promotion and success of newspaper price maintenance activities.

(d) the Union News newsstands are physically larger, more brightly lit and more fully stocked with publications than other newsstands.

5. The defendant is virtually insolvent and will be unable to pay a penalty of the size demanded by the plaintiff in its complaint.

V. Exhibits

a. Plaintiff's Exhibits:

1. Affidavit of Mr. B. Greenberg, N.Y. Post, dated 9/19/59.

2. Letter from Post to Mr. W. McCullough, Amcorp, dated 7/22/59.

3. FTC Subpoena duces tecum and specifications, dated 9/10/59, addressed to Post.

4. Memo from Mr. Greenberg to Mrs. D. Schiff, dated 5/11/64.

5. Memo from Mrs. Schiff, dated 5/13/64 & 5/15/64.

6. Memo from Mr. Greenberg to file, dated 5/29/64.

7. Memo from Mr. Greenberg to file, dated 6/1/64.

8. Memo from Mr. Greenberg to Mr. P. Daniels, dated 7/1/64.

9. Memo from Mr. Greenberg to Mr. J. Cintula, dated 7/22/64, with attachment.

10. Bills from Union News to Post, 7/64-7/60 (numbered 1-61).

11. Bill from Union News to Post, dated 1/60.

12. Memo from Mr. I. Veit, N.Y. Times, to Mr. A. Bradford, dated 7/3/60.

13. Memo from Mr. I. Veit, N.Y. Times, to Mr. A. Bradford, dated 10/10/60.

14. Invoice from Union News to Times, dated 3/31/61.

15A. Memo from Mr. P. Goldstein of the Times to Mr. M. Strassman, dated 4/20/61.

15B. 'Physical' exhibit depicting Union News newsstand produced by the Times.

16. Memo from Mr. Goldstein to Mr. Bradford, dated 4/21/61.

17. Memo from Mr. Goldstein to Mr. Veit, dated 12/19/61 with four invoices attached.

18. Memo from Mr. Goldstein to Mr. Veit, dated 1/26/62 with list of Union News and other dealers.

19. Memo from Mr. P. Reynolds of the Times to Mr. Goldstein and Mr. R. Waters, dated 4/11/62 with various attachments.

20. Memo from Mr. Waters to Mr. Reynolds, dated 6/12/62 with various attachments.

21. Memo from Mr. Reynolds to Mr. Strassman, dated 6/13/62.

22. Memo from Mr. Veit to Mr. Goldstein, dated 9/17/63 with one attachment.

23. Memo from Mr. J. McCabe to Mr. Goldstein, dated 1/9/69.

24. Memo from Mr. Reynolds to file, dated 5/16/69.

25. Memo from Mr. Goldstein to Mr. Reynolds, dated 5/20/69.

26 Invoice from Union News to Mr. Goldstein, dated 6/2/69.

27. Letter from Mr. A. D'Ambrosio to Mr. Goldstein, dated 6/3/69.

28. Draft of letter from Mr. Goldstein to Mr. D. McCullough, dated 6/3/69.

29. Memo from Mr. J. Scoble to Mr. Veit, dated 9/12/69.

30. Memo from Mr. J. Dolan of the Times to Mr. P. Binns, dated 6/27/69.

31. Letter from Mr. H. Bancroft to Mr. D'Ambrosio, dated 7/10/69.

32. Memo from Mr. Bancroft to file, dated 7/17/69.

33. Affidavit of Mr. D. McVeigh, N.Y. Times, including five folders, re payments to Union News.

34. Affidavit of Mr. McVeigh re payments to Armstrong Newsstands.

35. Affidavit of Mr. McVeigh, including four folders, re payments to Aero Enterprises Div.

36. Affidavit of Mr. McVeigh re payments to Airport Canteen Service.

37. List of Union News newsstands as held in N.Y. Daily News files.

38. Letter from Mr. McCullough to Mr. D. Feldman of the News, dated 12/4/63.

39. Letter from Mr. McCullough to Mr. Janes of the News, dated 3/25/64.

40. Letter from Mr. Carey of the News to Mr. McCullough, dated 3/27/64.

41. Letter from Mr. McCullough to Mr. Feldman, dated 8/4/64.

42. Letter from Mr. S. Kornish of the News to Mr. Feldman, dated 8/17/64.

43. Letter from Mr. McCullough to Mr. Kornish, dated 8/21/64.

44. Memo from Mr. Carey to Mr. Rohrbach of the News, dated 9/22/64.

45. Letter from Mr. Carey to Mr. Palmer of the News, dated 9/30/64.

46. Letter unsigned from News to Mr. McCullough.

47. Letter from Mr. Kornish to Mr. Fogel of Union News, dated 3/9/65.

48. Letter from Mr. Kornish to Mr. Fogel of Union News, dated 3/23/65.

49. Letter from Mr. Carey with two invoices, dated 10/4/65 and 10/11/65 from Union News to the News.

50. 46 invoices and vouchers re Union News and News transactions from 12/31/57 to 3/2/60.

51. 21 pages of invoices from Union News [illegible]

52. Letter from Mr. Lynch of the News to Union News, dated 3/4/59.

53. The American News Co., "Notice of Annual Meeting and Proxy Statement", dated 4/11/62.

54. Form 10-K Statement to SEC by American News Co., dated 3/1/63.

55. The American News Co., "Annual Report, 1963.

56. F.T.C. Final Order, Opinion, and Examiner's Initial Decision in In Re American News Co.

57. Circuit Court's Final Decree Modifying Order to Cease and Desist, dated 4/27/62.

58. Commission's Modified Order to Cease and Desist, dated 4/13/54.

59. Affidavit of Joseph Shea, with attached Report of Compliance of The American News Co., dated 2/4/63.

60. Letter dated January 19, 1960, on Union News letterhead, signed by Morris Strassman, advising newspapers of Union News' intention to raise retail prices of newspapers:

(a) letter to New York Times

(b) letter to Daily News

(c) letter to Post

61. All exhibits attached by defendant to its Amended Answers to Interrogatories, to wit:

1. Table of payments by New York Times, New York News, New York Post, and Wall Street Journal to Union News.

2. Table of payments by El Diario, New York Mirror, New York Journal, New York Column, Newark Star Ledger and Harrisburg Patriot to Union News.

3. Letter addressed to Gentlemen on an American News Company letterhead, dated October 25, 1962, and signed by Herbert Brilen, as Executive Vice President.

3(a) Memorandum addressed to all officers and executives of the American News Company and the Union News Company, on an American News Company letterhead, dated March 3, 1961, and signed by Henry Garfinkle, as President.

4. Table of Prices (per hundred copies) to Union News of the following newspapers: New York Times, New York News, New York Post, Wall Street Journal.

4(a) Table of copies purchased by Union News of the following newspapers: New York Times, New York News, New York Post.

5. List of effective dates of all wage increases paid by defendant to its newsstand employees during the years 1959 to 1969.

62. Defendant's Amended Answers to Interrogatories.

b. Defendant's Exhibits

All documents referred to are marked in connection with the statements taken by the Commission in its investigation prior to the commencement of this action.

Records and summaries thereof of the defendant relating to the matters alleged in the complaint including sales records, leases, schedules prepared at the request of the plaintiff and reserving the right to include any exhibits described by the plaintiff above.

[illegible] before the trial the parties will agree on those exhibits which may be received in evidence. The parties further agree that should either party hereafter decide to offer additional exhibits, prompt notice in writing of this decision shall be given to the other party.

VI. WITNESSES

a. Plaintiff's Witnesses

Joseph J. Gercke

Patrick J. Reynolds (by his testimony before the Federal Trade Commission Investigational Hearing on September 23, 1969, the transcript of which is to be treated as a deposition within the meaning of the Federal Rules of Civil Procedure, excluding hearsay testimony, and subject to all proper objections, including objections as to form)

Ivan Veit

Nathan W. Goldstein

Jack Underwood

Sidney Cornish

Tex James

William Carey

Byron Greenberg

Edgar A. Roll

John Potulney

Edwin Pancher

Carole Rogers

Matt Meyer

Albert D. Wallace

John Potts

Albert E. Von Entress*/

Lester Zwick*/

Roy Newborn*/

Henry Garfinkle

William McCullough

Morris Strassman

Herbert Frilen

William Welkowitz

Alfred D'Ambrosio

(b). Defendant's Witnesses:

The defendant may call upon the following witnesses:

All witnesses named by the plaintiff

Employees of the defendant relating to the records of the defendant including Vincent Mineo

James C. Goodale and other members of the legal staff of the New York Times and the Daily News

All parties whose depositions have been taken including Louis M. Loeb

Witnesses relating to payments made in connection with Chicago newsstands, Washington, D. C. and Boston and elsewhere not presently ascertained.

The defendant reserves the right to take the depositions or subpoena witnesses whose testimony may be pertinent to the matters set forth under "Plaintiff's Contentions" as "(e) Other Newspapers Still Extant" and "(f) Defunct New York City Newspapers".

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*/ The plaintiff reserves the right to take the depositions of these three witnesses and to introduce the transcripts of their depositions in lieu of their live testimony at trial.

The parties agree that should either party hereafter decide to call additional witnesses, prompt notice in writing of that decision shall be given to the other party.

VII. Time

Plaintiff expects at this time to require three trial days.

Defendant expects at this time to require three trial days.

VIII. The issues to be tried by the Court are formulated as follows:

1. Whether the defendant has violated the order of the Commission as modified by the Court of Appeals including the following:

(a) Whether the order of the Commission as amended by the Court of Appeals was intended to cover newspapers as well as all other products to the extent that this action for penalty may be based on that order;

(b) Whether the payments were made for "display or promotional services or facilities" or whether they were price allowances;

(c) Whether price allowances as distinguished from payments for "display and promotion" are included within the order;

(d) Whether the defendant had reason to believe that proportionally equal allowances were not available to competitors of the defendant. (This involves a determination of who are the competitors, whether propor-

tionalization was possible and the special position of the defendant with respect to its functional basis in the industry.)

2. In the event of a determination that there was a violation of the order, what are the mitigating circumstances, if any, including:

(a) The defendant's position that damages should not be assessed with respect to payments or allowances prior to a hearing before the Commission; and defendant's contention that it considered the order at all times as intending to exclude newspapers from its purview;

(b) The lack of damage to the public or competitors and the lack of profit to the defendant, the financial record of the defendant as evidence of lack of effect on competition and as affecting the amount of any penalty;

(c) The contention of the defendant that it is a victim of a price fixing conspiracy by the newspapers.

3. Whether the newspapers were engaged in a price fixing conspiracy in which they succeeded in securing absolution for themselves with the cooperation of the Commission and whether in these circumstances the defendant may be absolved from the claims in the complaint.

Dated: New York, New York

February 28, 1973

SO ORDERED:

DUDLEY B. BONSAL
United States District Judge

Consented to:

WHITNEY NORTH SEYMOUR, JR.,
United States Attorney for the
Southern District of New York
Attorney for the Plaintiff

BY: /s/
GERALD A. ROSENBERG,
Assistant United States Attorney

/s/ Eugene Frederick Roth
EUGENE FREDERICK ROTH, ESQ.
Attorney for the Defendant

You will please take notice that a .....
which the within is a copy, was this day
uly entered in the within entitled action,
the office of the Clerk of this Court.

Dated, N. Y., ..., 19.....

Yours, etc.,

.....

United States Attorney
Attorney for .....

o

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Attorney for .....

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ir:

Please take notice that the within.....
ill be presented for settlement and sig-
ature to the Honorable .....
nited States District Judge, at the office of
he Clerk, Room 601, United States Court-
ouse, Foley Square, Borough of Manhattan,
ity of New York, on the ..... *day of* .....,
)....., *at 10:30 o'clock in the* ..... *noon*
or as soon thereafter as counsel can be heard.

Dated, N. Y., ..., 19.....

Yours, etc.,

.....

United States Attorney
Attorney for .....

o

.....

Attorney for .....

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-v-

ANCORP NATIONAL SERVICES, INC.,

Defendant.

PRE-TRIAL ORDER

70 Civ. 4170 DNE

WHITNEY NORTH SEYMOUR, Jr.
TEL. 264-2311 *United States Attorney*
264-6??? *Attorney for* U.S.A.

Due service of a copy of the within is hereby admitted.

New York, ..., 19.....

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Attorney for

To

.....

Attorney for

FPI—SS—2-22-71—50M—7015

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

Plaintiff, : AMENDED ANSWER

-against- : 70 Civ. 5770 HFT

ANCORP NATIONAL SERVICES, INC., :

Defendant. :

- x

The defendant, Ancorp National Services, Inc., for its amended answer by it- attorney, Eugene Frederick Roth, Esq.:

FIRST: Admits the allegations of Paragraph 3 of the complaint except that the proceeding before the Federal Trade Commission therein referred to related solely to the purchase and sale of magazines, paper back and comic books and tobacco products, and excluded newspapers therefrom, and no charges were issued or findings made therein at any time against the defendant relating to any newspapers or with respect to the matters set forth in the complaint; and the order referred to in said Paragraph 3 was not intended to enforce the provisions of law applicable thereto with respect to newspapers in the absence of prior hearing and due process before the Federal Trade Commission.

SECOND: Denies the allegations of Paragraph 5

of the complaint except admits that it received the sums mentioned during the period referred to from the Times Company on account of certain services, expenditures and costs incurred by the defendant in handling Times' publications to the benefit of the Times Company.

THIRD: Denies the allegations of Paragraphs 6, 10 and 14 of the complaint.

FOURTH: Denies the allegations of Paragraph 9 of the complaint except admits that it received the sums mentioned during the period referred to from the News Syndicate on account of certain services, expenditures and costs incurred by the defendant in handling the News publications to the benefit of the News Syndicate.

FIFTH: Denies the allegations of Paragraph 13 of the complaint except admits that it received the sums mentioned during the period referred to from the Post Co. on account of certain services, expenditures and costs incurred by the defendant in handling the Post publications to the benefit of the Post Co.

For a First Affirmative Defense

SIXTH: The within action to collect penalties is premature having been commenced without due process or prior hearing before the Federal Trade Commission to the prejudice and denial of the defendant's rights.

For a Second Affirmative Defense

SEVENTH: The proceeding instituted by the Federal Trade Commission pursuant to which the order of April 13, 1964 was entered related solely to the purchase and sale of magazines, paper back and comic books and tobacco products, and excluded newspapers therefrom, and no charges were issued or findings made by the Federal Trade Commission at any time against the defendant relating to newspapers or with respect to the matters set forth in the complaint, and the order of April 13, 1964 was not intended to enforce the provisions of law applicable thereto to newspapers in the absence of prior hearing and due process before the Federal Trade Commission.

For a Third Affirmative Defense and in Mitigation

EIGHTH: On information and belief, the Times Company, the News Syndicate and the Post Co., their officers and employees, at the times mentioned in the complaint were engaged in a combination, plan and agreement to fix and maintain retail prices for their publications when sold on newsstands in and about the City of New York contrary to the antitrust laws; and in pursuance of and as part of such illegal combination, plan and agreement, the Times Company, the News Syndicate and the Post Co., their officers and employees, forced the defendant to incur for their benefit costs and expenditures without proper payment while precluding the defendant from modifying its retail prices to compensate therefor; and

pursuant to that combination, plan and agreement, the Times Company, the News Syndicate and the Post Co. arranged with the Federal Trade Commission to proceed summarily against the defendant while absolving such parties from action by the Federal Trade Commission by reason of the allegedly illegal payments to the defendant and the illegal price-fixing conspiracy referred to above.

Dated: New York, New York
March 1st, 1971

Eugene Frederick Roth

EUGENE FREDERICK ROTH, ESQ.,
Attorney for Defendant
Ancorp National Services, Inc.
230 Park Avenue
New York, New York 10017
Telephone: (212) 686-8030

SECOND AMENDED ANSWER
(Filed July 5, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, : 70 Civ. 5770 DBB

Plaintiff, : SECOND AMENDED ANSWER

-against- :

ANCORP NATIONAL SERVICES, INC., :

Defendant. :

The defendant, Ancorp National Services, Inc., for its second amended answer by its attorney EUGENE FREDERICK ROTH, ESQ:

FIRST: Admits the allegations of Paragraph 3 of the complaint except that the proceeding before the Federal Trade Commission therein referred to related solely to the purchase and sale of magazines, paper back and comic books and tobacco products, and excluded newspapers therefrom, and no charges were issued or findings made therein at any time against the defendant relating to any newspapers or with respect to the matters set forth in the complaint; and the order referred to in said Paragraph 3 was not intended to enforce the provisions of law applicable thereto with respect to newspapers in the absence of prior hearing and due process before the Federal Trade Commission.

SECOND: Denies the allegations of Paragraph 5 of the complaint except admits that it received the sums mentioned during the period referred to from the Times Company.

THIRD: Denies the allegations of Paragraphs 6, 10 and 14 of the complaint.

FOURTH: Denies the allegations of Paragraph 9 of the complaint except admits that it received the sums mentioned during the period referred to from the News Syndicate.

FIFTH: Denies the allegations of Paragraph 13 of the complaint except admits that it received the sums mentioned during the period referred to from the Post Co.

For a First Affirmative Defense

SIXTH: The within action to collect penalties is premature having been commenced without due process or prior hearing before the Federal Trade Commission to the prejudice and denial of the defendant's rights.

For a Second Affirmative Defense

SEVENTH: The proceeding instituted by the Federal Trade Commission pursuant to which the order of April 13, 1964 was entered related solely to the purchase and sale of magazines, paper back and comic books and tobacco products, and excluded newspapers therefrom, and no charges were issued or findings made by the Federal Trade Commission at any time against the defendant relating to newspapers or with respect to the matters set forth in the complaint, and the order of April 13, 1964 was not intended to enforce the provisions of law applicable thereto to newspapers in the absence of prior hearing and due process before the Federal Trade Commission.

For a Third Affirmative Defense
and in Mitigation

EIGHTH: On information and belief, the Times Company and the News Syndicate, their officers and employees, at the times mentioned in the complaint were engaged in a combination, plan and agreement to fix and maintain retail prices for their publications when sold on newsstands in and about the City of New York contrary to the antitrust laws;

and in pursuance of and as part of such illegal combination, plan and agreement, the Times Company and the News Syndicate, their officers and employees, forced the defendant to incur for their benefit costs and expenditures without proper payment while precluding the defendant from modifying its retail prices to compensate therefor; and, pursuant to that combination, plan and agreement, the Times Company and the News Syndicate arranged with the Federal Trade Commission to proceed summarily against the defendant while absolving such parties from action by the Federal Trade Commission by reason of the allegedly illegal payments to the defendant and the illegal price-fixing conspiracy referred to above.

For a Fourth Affirmative Defense

NINTH: Any rights, claims or causes of action on the part of the plaintiff arising prior to January 1, 1967 are barred by the statute of limitations (15 U.S.C. Sec.15(b)).

Dated: New York, New York
June 24, 1973

Eugene Frederick Roth

EUGENE FREDERICK ROTH, ESQ.,
Attorney for Defendant,
Ancorp National Services, Inc.,
230 Park Avenue
New York, New York 10017
Telephone: (212) 686-8030

GAR:jp
73-0954

ORDER OF REFEREE IN BANKRUPTCY VACATING ORDER STAYING ALL LITIGATION AGAINST ANCORP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of :

ANCORP NATIONAL SERVICES, INC., : [redacted]

Debtor, : 73 B 281

In Proceedings for an Arrangement. :

WHEREAS the motion of the creditor, United States of America, for an order partially vacating the Order of this Court of March 20, 1973, staying all litigation against the debtor, Ancorp National Services, Inc., was consented to in Court on April 30, 1973, by counsel for the debtor and counsel for the creditors' committee, now, therefore,

IT IS HEREBY ORDERED that the Order of this Court of March 20, 1973, staying all litigation against the debtor, Ancorp National Services, Inc., be and hereby is vacated, on motion of the creditor, United States of America, to the extent that the United States of America may proceed to trial and judgment in the plenary action, United States of America v. Ancorp National Services, Inc., 70 Civ. 5770 MEL, before United States District Judge Dudley B. Bonsal, before whom the case is now pending.

Dated: New York, New York

May , 1973

[redacted] J. [redacted]
Referee in Bankruptcy

jqs TRANSCRIPT OF PROCEEDINGS BEFORE BONSAL, D.J. ON JULY 9, 10, 11, 12, 1973

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs. 70 Civ. 5770

ANCORP NATIONAL SERVICES,

Defendant.

Before:

HON. DUDLEY B. BONSAL,

District Judge.

New York, July 9, 1973;
10.00 o'clock a.m.
(Room 1105)

APPEARANCES:

PAUL CURRAN, Esq.,
United States Attorney for the
Southern District of New York;
By: GERALD A. ROSENBERG, Esq.,
NAOMI L. REICE, Esq.,
Assistant United States Attorneys,
Of Counsel.

DELSON & GORDON, Esqs.,
Attorneys for the defendant;
By: EUGENE ROTH, Esq.,
GEORGE HALPERN, Esq.,
Of Counsel.

(Case called.)

MR. ROSENBERG: Ready for the Government.

THE COURT: Proceed, Mr. Rosenberg.

MR. ROSENBERG: Hood morning, your Honor.

The Government will waive an opening statement and proceed directly to trial.

THE COURT: I have looked at your papers and I have talked to all of you.

Do you want to make an opening statement?

MR. ROTH: I have a motion to make.

THE COURT: What is your motion?

MR. ROTH: Your Honor, the record shows that Judge Tyler denied our motion to dismiss -- and I don't know whether you examined the record. Judge Tyler denied our motion to dismiss on the ground that the proceeding in so far as it refers to civil damages was wholly premature. There should have been a prior hearing before the Commission and notice and so on.

I assume your Honor --

THE COURT: If Judge Tyler so decided I adhere to his decision. That is the law of the case as far as I am concerned.

MR. ROTH: Of course, as far as you are concerned. I renew the motion.

THE COURT: You have reserved your rights. I will adhere to it.

MR. ROTH: There is a further point I want to make. I don't want to argue in detail now. I think an analysis to the brief that the Government has submitted will show that actually the assessment of the penalty itself in this case could not be made without some prior direction or hearing before the Commission. The Attorney General is not authorized to bring this proceeding.

They themselves claim that they included an application for an injunction so that that penalty provision would be ancillary to it. We say that that is the law of the case.

I think that will require considerable briefing and --

THE COURT: You reserve your rights on the record on that.

MR. ROTH: I want to mention also that we filed and served an amended answer pursuant to the authority of the pretrial order which included the statute of limitations as a defense which we didn't afford.

We said a five-year statute and the Government said a four-year statute and your Honor will have to determine that.

THE COURT: I will do that after I hear what evidence there is. Thank you.

You may proceed, Mr. Rosenberg.

MR. ROSENBERG: On page 35 of the pretrial order where the parties listed the witnesses they intended to call the Government indicated that it would call Patrick J. Reynolds and the parties stipulated that he would be called by his testimony before the Federal Trade Commission, the investigational hearing on September 23, 1969, the transcript of which is to be treated as a deposition within the meaning of the Federal Rules of Civil Procedure excluding hearsay testimony and subject to all proper objections including objections as to form.

At this time the Government would propose to call Mr. Reynolds and to submit to the Court for its inspection the transcript of his testimony with certain excisions which we will indicate on the record.

MR. ROTH: I don't --

THE COURT: Are you calling Mr. Reynolds to the stand?

MR. ROSENBERG: He is dead, your Honor.

THE COURT: Oh, I see.

MR. ROTH: Counsel is using a legal fiction of some sort. We stipulated that his testimony could be

treated as if it's a deposition.

THE COURT: Fair enough.

What I want you gentlemen to do with Mr. Reynolds' testimony is that I want you to indicate what parts of it you want me to read. I don't want to read all of it.

MR. ROTH: I feel that the testimony should be read into the record.

THE COURT: That is going to waste a colossal amount of time.

MR. ROTH: There are exhibits. I think this is the first witness and I think counsel intends to lay the groundwork through him.

THE COURT: Is that right?

MR. ROSENBERG: We are prepared to submit approximately 45 pages out of the 65 pages of his testimony.

THE COURT: I suppose if you are going to do that you better submit the whole thing. I don't see why it's got to be read into the record and waste all that time.

MR. ROTH: I think it's important. It contains elements of the case that I think should be brought out to your Honor directly and contains objections. There will be objections to the things he puts in there. I never intended, when I stipulated that, that it would be just

thrown into the hopper.

THE COURT: You have live witnesses, haven't you?

MR. ROSENBERG: Yes, sir.

THE COURT: Let's proceed to the live witnesses and see how far we get and then we will consider that other matter.

MR. ROSENBERG: Before calling the first witness for the Government I would like to introduce the Court to Mr. Alexander Greenfeld who is in the legal department of the New York Times. He is a member of the bar of the District of Delaware and the District of Columbia. He is a former United States Attorney from Delaware.

I move his admission pro hac vice today.

THE COURT: I will be glad to hear from you, sir.

MR. ROSENBERG: The Government calls as its first witness Ivan Veit.

- -

I V A N V E I T , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ROSENBERG:

Q By whom are you empllyed?

A New York Times.

Q How long have you been employed by The Times?

A 45 years.

Q Would you briefly indicate to the Court the positions you have held with the New York Times?

A I joined The Times in 1928 in the classified advertising department. I became promotion manager in 1932 and promotion director shortly after the war, World War II, assistant business manager in 1957 and a year or two later that title was changed to business manager.

In 1963, vice-president, and in 1970 executive vice-president.

Q Could you indicate what your responsibilities were as an assistant business manager beginning in 1957?

A The principal responsibilities were supervison of the promotion and circulation departments.

Q Did those duties change in any material respect when you became business manager?

A No, my responsibilities were broadened somewhat

but those responsibilities remained.

Q When you became vice-president of The Times in 1963 did you continue to be familiar with the circulation and promotion departments of The Times?

A Yes.

Q When would you say your familiarity with those two departments of The Times came to an end, if it did?

A My contact became much less frequent at the end of 1967. There as a reorganization and the circulation, advertising and promotion departments were assigned to Vice-President Andrew Fisher and my responsibility became the development and management of the subsidiary activities of The Times.

Q Mr. Veit, in the course of your employment at The Times have you become familiar with the manner in which the copies of the New York Times are distributed to and sold by the retail news outlets?

A In a general way, yes.

Q Could you indicate in a general way how the circulation of The Times proceeds from the plant to the ultimate customer?

A In one part of the Manhattan area the Times directly to the news dealers, lower Manhattan and on the west side. Elesewhere the distribution is made through

wholesalers who distribut other publications as well as The Times.

The New York City wholesalers pick up their papers at our loading docks. The suburban newspapers receive the papers from our trucks. They carry the papers to the suburban wholesalers and, of course, we ship to the wholesalers throughout the country who handle The Times.

Q Do you know what the wholesalers do with the papers when they receive them from The Times' trucks?

A They receive them in bulk. They break them down according to their schedule of deliveries and distribute them, usually carrying other publications on the same runs.

THE COURT: These wholesalers buy the papers from whom?

THE WITNESS: From us.

THE COURT: Where do you do your own direct distribution? How does that operate?

THE WITNESS: We bill the dealer. That is a limited number and only in Manhattan.

Q Is this description which you have just given us roughly accurate for the year 1960?

A Yes.

Q Focusing on the year 1960, if you will, did The Times sell copies of its newspapers to any multi-stand outlets in that year?

A Yes.

Q Can you name any of those multi-stand outlets?

A The largest, of course, was Union News. There were other smaller ones. There was ABC Group, I believe one named Armstrong. I don't know the others.

MR. ROTH: What is the period we are talking about?

THE COURT: 1960.

Q In 1960 did The Times also sell its papers in independent outlets, that is to say singly owned retail outlets?

A We sold them in Manhattan, in the area I described as being in our direct delivery area.

THE COURT: You said lower Manhattan?

THE WITNESS: Lower Manhattan and up the west side. That is about to 125th Street.

Q In addition to the sales which the New York Times made directly to retail outlets, to your knowledge, did the wholesalers to whom the New York Times sold its product distribute to any independent dealers in addition to the multi-stand outlets that you have mentioned?

A Yes, the wholesalers deliver to a great many independent dealers. Most of the dealers are independent.

Q Could you give us an idea of how many, an order of magnitude, how many independent stands The Times has sold out to in the New York metropolitan area?

A At that time -- and I may be wrong about this -- but at that time I would think in New York City and suburbs there were 13 to 15,000 newsstand outlets for newspapers. There are fewer today but in 1960 I think that would be the number.

Q By what factor has that number diminished at present, if you know?

A Well, this is a guess and I don't think it far wrong. I think about half that many now.

Q Mr. Veit, does the final product sold at the newsstands, that is the copy of the New York Times, differ in any way depending on whether it's sold in an independent newsstand or a multi-chain, multi-stand chain?

A Well, the difference would be a factor of time and not the nature of the stand. Our delivery runs are going out over a long period of time and the trucks take the papers in chronological sequence.

Q But the paper itself is physically the same whether it's sold at a Union newsstand, an ABC vending

stand or an independent outlet wholly owned by one proprietor, is that right?

A That is correct.

Q Do the retail distributors do anything with the newspaper physically to alter its shape or its content after they acquire it either from The Times or a wholesaler and before they sell it to the general public?

A On the daily paper, no. On the Sunday newspaper they assemble it. They receive the Sunday paper in parts over a period of two or three days and they do put them together.

THE COURT: Where do they get those from?

THE WITNESS: The same process.

THE COURT: Through the wholesalers?

THE WITNESS: Yes.

Q Are parts of the New York Times received other nights?

A Some of them, yes. The Advance, the Book Review, the Travel & Drama are inserted into one package and they start going out Wednesday night or Thursday.

Q You say that those sections are inserted by you. Which are the sections of the papers that have to be assembled By the retailer?

A Mr. Goldstein would be a more expert witness

than I on that. There is the Advance. There is the Real Estate & Financial. There is the Sports and Review, and there is the Classified and the main section.

Uusally they have those five or possibly more units to put together.

Q Do all the retail outlets have to do substantially the same assembling of the New York Times for the Sunday copy?

A Practically. There are very few which because of their location and the volume of the Sunday paper we deliver complete. That procedure has been greatly reduced in recent years.

I don't know the present number but there are a few stands, I believe almost entirely in Manhattan, that do receive completes.

THE COURT: This is the area of direct delivery that you are talking about? Has this ever happened to wholesalers?

THE WITNES: I can't answer that, your Honor. I believe it's only direct delivery but Mr. Goldstein will be able to answer that question.

Q Mr. Veit --

A Hotels are a prime example of complete delivery.

Q Mr. Veit, focusing again on the period of

approximately 1960, were there union newsstands in rough proximity to other retail outlet at which copies of the New York Times were sold?

A Yes.

Q In the metropolitan New York area?

A Yes.

Q Is that still true today?

A Yes.

Q To the best of your knowledge has that been true continuously since 1960 through the present, let's say?

A Yes.

THE COURT: I am a little confused. How do you sell the Union News?

THE WITNESS: In our direct area we deliver the paper and in the wholesale area the wholesaler delivers the paper.

THE COURT: Just as any other outlet?

THE WITNESS: Yes.

Q Does the phrase "point of sale" have any particular meaning in the newspaper circulation field?

A Yes.

Q Would you explain what it means?

A Well, the point of sale is the locality where the paper is available to the public. It's also frequent-

ly a point where special promotion is useful because the paper is available.

Q Has The Times ever used promotional material at the point of sale?

A For a great many years.

Q Focusing on the period beginning when you became assistant business manager in 1957 and going on to 1960 did The Times use any promotional material at the point of sale, to your knowledge?

A Yes, we did. We did it regularly.

Q What sorts of promotional devices or schemes did you use?

A Well, the principal device was an 11 by 14 approximately card --

Q 11 inches by 14 inches?

A Yes. It would fall into two rough categories, one the general promotion with some slogan or phrase that we thought was complimentary and useful to the New York Times but more particularly to promote specific articles or series of articles, the World Series, the Olympics, and so on.

Q Do you have any recollection of how frequently The Times would run off one of the series of posters and the period 1957 to 1960?

A My best recollection would be that we produced at least one or two a month.

Q About how many would you run off?

A We would run off enough for the newsstands in the area and in some instances, probably more instances than not, we also provided for important stands outside the metropolitan area.

Q Can you give us an idea in terms of order of magnitude how many posters were printed in this period of the late '50s?

A 15 to 20,000 would be a typical print order.

Q Were the posters distributed by The Times to the news outlets?

A Well, they were delivered with the papers in our direct delivery area. They were distributed with the bundles of papers by the wholesalers in their areas.

Q Were they distributed to only one class of stands or one group of stands owned by a particular owner or owners?

THE COURT: Are you talking about direct delivery now? You send these things to the wholesalers. Do you know what they did with them?

THE WITNESS: We would know because we had a field force, y our Honor, that visited the wholesalers

each day and checked newsstands. If the cards were not distributed we would know it.

They would go out in bundles with the papers. The news dealer frequently exercised his option to display them or not but they went out generally to all newsstands. There was no selectivity.

MR. ROTH: May I ask that the question and answer preceding this be read.

MR. ROSENBERG: I don't believe the question has been answered.

MR. ROTH: He answered that.

(Question read.)

Q Is it a fair statement, Mr. Veit, that in the period 1957 to 1960 the posters were distributed to Union newsstands as well as other stands?

A They would in the normal course receive them like all stands.

THE COURT: How did you sell Union News, sometimes direct and sometimes to wholesalers, is that correct?

THE WITNESS: Correct.

THE COURT: If you were selling Union News through wholesalers you would, in effect, sell the newspapers and pass the promotional material to the wholesalers?

THE WITNESS: The wholesaler provided the transportation to the stand whether it was Union News or an independent.

THE COURT: But your part of it was in getting it to the wholesaler?

THE WITNESS: Yes.

Q Did the New York Times in the period 1957 to 1960 seek the permission of the newsstand owners before posting or directing the wholesalers to post these placards, the promotional material?

A No. Our field men, road men as they were called, who made the circuit of the stands usually more often than not would put the poster up. The news dealer didn't object.

Q Is this statement true as to the Union newsstands as well as the other independently stands?

A I can't answer that. I would assume so but I don't know for a fact.

Q Are there any other factors in the area of promotion that bear on the sale of the New York Times?

A A great many. The promotion of The Times, in addition to various forms of point of sale promotion, involves newspaper advertising, radio spots, television, direct mail, canvassing. We use every technique that

we can think of that is effective.

Q At the point of sale itself are there any other promotional devices used besides the poster?

A Yes, se provided mobile newsstands, rolling newsstands which a dealer could roll in and out of his store with The Times promotion on it.

Over the years we used to paint stands for a dealer in return for which we would paint on one of our slogans. We provided point of sale novelties such as change pads and that sort of thing that you see in stationery stores.

Q These would bear the logo of the New York Times?

A Yes, and whatever our current slogan happened to be.

Q Were there any other features in the way the newspaper itself was displayed at the stand that were of concern to you in your capacity as head of the promotion department of The Times?

A Well, we at one period created a special newsstand with our slogan at the top. That was used in the country area, not so much in the city area. This was in areas where the paper had not been readily available.

Q Was it a concern of yours whether the New York

Times itself was physically displayed in a particular position or in a particular manner on the newsstands?

A Well, yes. The position that was preferred was in the front line on the counter. The locale in the line made no difference, just so long as it was displayed with the others in the front.

Q Were there employees of the New York Times under your control or direction whose job it was to see that The Times was adequately displayed at the newsstands?

A Yes, that was one of the responsibilities of the group we called road men or inspectors.

Q Was this true in the period 1957 to 1960 as well?

A I beg your pardon?

Q Is this statement that you just made that the road men were in charge of maintaining --

A That was one of their duties, yes.

Q In that period, 1957 to 1960?

A Yes.

MR. ROTH: I want to mention something.

Of course, there is background material prior to the statute of limitations.

THE COURT: I understand that.

MR. ROTH: I don't intend by being quiet --

THE COURT: All right.

MR. ROTH: I will object perhaps later.

THE COURT: Okay.

Q Mr. Veit, in 1960 did the New York Times sell the copies of its newspapers to retail outlets at a uniform rate?

THE COURT: That question I have a little trouble with.

Can you repeat that question.

(Question read.)

THE COURT: Are you talking about direct distribution? That is the only sale to retailers you made, is that right?

THE WITNESS: I believe the answer to the question is that in 1960 Union News paid a lower rate --

THE COURT: That isn't the question he is asking you. That is why I have trouble understanding the question.

In 1960 you sold some of your papers to retailers in Manhattan?

THE WITNESS: Yes.

THE COURT: You sell other papers to wholesalers?

THE WITNESS: Yes.

THE COURT: So the purport of that question, as

far as I can understand it, is where you sold direct, did you sell them at the same price?

THE WITNESS: The price per hundred copies to the Union newsstands was lower --

THE COURT: You haven't answered his question or my question.

You sold direct. When you are selling direct that is lower Manhattan?

THE WITNESS: Yes.

THE COURT: The rest were wholesalers. When you sold direct the question is did you sell at the same price and then you started saying about Union News.

Is the answer you didn't sell at the same price? You sold direct?

THE WITNESS: That is correct.

THE COURT: If you didn't sell at the same price what was the difference in prices at which you sold at retail?

THE WITNESS: The price at retail was the same.

THE COURT: That is not my question. Your price.

THE WITNESS: My recollection is, and there is a record here that could refresh it, in 1960 the price per hundred copies to a dealer -- the regular price was

$19 and, I believe, our price to Union News was 18.75.

THE COURT: Is that the only one that was 18.75 when you sold at retail?

THE WITNESS: So far as I know.

THE COURT: That was the one direct outlet where there was a discount, is that right?

THE WITNESS: Yes, sir.

Q Mr. Veit, if we can turn back to the question of The Times relationship to its wholesalers as well as to its retailers, in those instances I gather that the great majority of instances where The Times sold to a wholesaler to a retailer --

A That is correct.

Q Did The Times negotiate directly with the retailer for the sale of the paper or did The Times only negotiate with the wholesalers?

A We didn't negotiate with the retailer.

Q What did occur?

A The wholesaler distributed our papers. Our road men checked the supply and the position. They performed such chores as moving papers around if one had left over and another stand had sold out, things like that. But that was the extent of our contact with the retailer.

Q Focusing on the year 1960 you have testified

that The Times granted a rebate or a price allowance to the Union News Company. To the best of your recollection, was there any other outlet, retail outlet either multi-stand or individual to which The Times granted a rebate or price allowance?

THE COURT: I haven't heard anything about a rebate until you started talking about a rebate. All I heard was that on direct sales they sold $19 a hundred and to Union 18.75 a hundred.

THE WITNESS: In the direct area, your Honor. I believe that same result was obtained in the areas where the wholesalers supplied the newspapers by means of a rebate to us.

THE COURT: Through the wholesaler?

THE WITNESS: Yes.

THE COURT: How did that work out? Who sold the wholesaler the lot of newspapers and what would happen? Did he report to you whatever he sold so many to Union News or give you a 25-cent rebate, is that what happened?

THE WITNESS: I am not sure of the mechanics. I wish you would ask that question of the mechanics of it of Mr. Goldstein.

Q Do you recall in 1960 approximately how much money The Times granted to the Union News Company in the

form of price allowances for the sale of the New York Times?

A My recollection is that on the per copy basis it ran around 22 or $23,000 per year total.

MR. ROTH: May I ask just how these payments or allowances of credits are made?

THE COURT: I am a little confused.

In the case of direct sales you sell them at 25 cents less per hundred copies at a time?

THE WITNESS: Yes.

THE COURT: When you sold to a wholesaler -- he told us he couldn't give us the mechanics of that.

In taking in this 22 or 23,000 you are including the difference in the direct sales and what the allowances made to wholesalers was?

THE WITNESS: That is the total, yes.

THE COURT: Okay.

Q Do you know how long this practice existed prior to 1969 of granting the Union News Company --

A I don't know how long it lasted. It was a long tradition and it was an accepted part of the operation.

Q Was there any consideration for these payments or price differentials that The Times granted to the Union

New Company?

A There was no special consideration. The basis was our belief that the Union newsstands were high cost operations. They were high traffic points.

They were valuable to us and we recognized that their costs were of a a different order than those of ordinary newsstands. They had unionized help with periodic escalation in salaries and it was on that basis that from time to time we granted requests from Union News for increases in the rebate allowance.

Q Up to the period of 1960 did the Union News Company perform any services or supply you with any product that the other retail outlets were not also supplying you?

A No. Their service to us was to display The Times as well as it did other leading publications and have an adequate supply. But they did nothing else.

THE COURT: As far as you know, was this a regular practice in the trade? There were other newspapers and they did the same thing?

THE WITNESS: It was a general practice. We didn't know the details but it was generally known that both newspapers and magazines made concessions of various sorts because of the importance of the Union News outlets.

Q Did there come a time in May of 1960 when The Times ceased being sold at all of the Union newsstands?

A In May 1960 The Times was not withheld from sale in the Union newsstands but it was taken it out of the display position and put on the back shelf or under the counter. The same was done with the World-Telegram.

Q Can you recall on which Union newsstands, if any this occurred?

A It occurred in the Union newsstands in the railroad terminals, Penn Station, Grand Central, and in Union newsstands operated along the suburban transportation lines.

Q At the time --

THE COURT: This happened both where you were selling direct and where you were selling to wholesalers?

THE WITNES: Yes, your Honor.

Q Prior to the removal of the New York Times from the front display space on the counters were you party to any conversations with any person representing the Union News Company concerning the sale or distribution of The Times?

A I had no conversations with anyone from Union News.

Q How long, to the best of your recollection

today, was The Times kept off the Union newsstands in these locations?

A It was not kept off. It was taken out of display for ten days.

Q Did this have any effect on the net circulation of the New York Times?

A It did. We tried to compensate for it. We got permission from the director of concessions for the railroad to set up independent stands in the terminals and we had newsboys or newsmen at various suburban stations but my recollection is that even with that compensating sale our loss was in the neighborhood of about 1500 copies a day, roughly 1000 in the city and 500 in the suburbs, something like that.

Q Does the phrase "hustler sales point" have any particular meaning in the newspaper field?

A I avoided that phrase, hustler, but it's quite respectable. A man or boy wh o sells a particular paper at a sales point is called a hustler. We had hustlers as well as the stands that were set up in the railroad terminals.

Q Did this fully make up for the loss in circulation?

A No, we had a net loss, as I said, of 1500 a day,

according to my recollection.

Q Was The Times permanently removed from the Union newsstands in Grand Central and other major terminals?

MR. ROTH: Permanently?

MR. ROSENBERG: Yes.

A No.

Q It was restored to the stands?

MR. ROTH: He testified it was for ten days.

THE COURT: As I understand it, this boycott lasted for ten days?

THE WITNESS: Yes.

THE COURT: What is your question?

Q After The Times was restored to the Union newsstands in May of 1960 did there come a time when y ou were asked to attend a meeting with representatives of the Union News Company?

A Yes.

Q Can you describe the circumstances in which you were asked to attend this meeting?

A Mr. Goldstein, Nathan Goldstein, our circulation director, asked if I would attend a luncheon which would be given at The Times to be attended by Henry Garfinkle, the head of American News and Union News and

Morris Strassman and William Welkowitz of The News.

Q Were you told that any other persons would be in attendance?

A No.

Q Did this meeting occur?

A It did.

Q Approximately when did it occur?

A It happened in early July 1960.

Q Where was it held?

A In one of the small private dining rooms on the 11th floor of The Times.

Q Before turning to the substance of the discussion at this meeting at the New York Times in July of 1960 I wonder if you can identify some of the persons who were thered.

THE COURT: He just did, I thought.

Q Had you previously met with William Welkowitz of the New York Daily News?

A I met him casually. I had no direct business dealings with him but I knew him.

Q Did you at any time prior to the July 1960 at The Times have occasion to discuss with Mr. Welknowitz the business problems of the New York Times or the New York Daily News?

A No.

Q At any time subsequent to the July 1960 meeting did you have such conversation with Mr. Welkowitz?

A No.

Q Prior to the July 1960 meeting that you have just mentioned had you had any meetings with Henry Garfinkle?

A No business meetings. I had seen him in social groups.

Q Had you had any occasion prior to this meeting to have any conversations with him whether in person or on the phone concerning the business problems of the New York Times or the Union News Company?

A No.

Q What about Morris Strassman?

A I didn't know Morris Strassman. I had seen him only a couple of times. I had no business conversations with him.

THE COURT: Who was Mr. Strassman?

THE WITNESS: I believe he was with the Union News. He was in charge of the newspaper division.

Q Was it your practice as the assistant business manager of the New York Times in 1960 to meet on any kind ofregular basis with the other executives of New York City

newspapers who held comparable positions?

A No.

Q Did you from time to time on a regular basis --

THE COURT: This isn't an antitrust case, I hope.

MR. ROSENBERG: No, your Honor, it's not.

THE COURT: I don't quite see the relevancy of these questions at this moment.

MR. ROTH: He is anticipating my theory of implications of price fixing which I am not going to prove by direct evidence, which you never do in an antitrust situation.

THE COURT: All right.

You are saying you didn't, that is your answer.

THE WITNESS: Right.

Q Turning to the July 1960 meeting at The Times, can you recall the substance of the conversation that occurred at that meeting?

A Yes. Mr. Garfinkle outlined his financial problems. It was a familiar story.

THE COURT: Why was that?

THE WITNESS: Because every time a request came through for an increase in allowances it was based on the claim which I must confess that we accepted at that period

that his costs were high and that newspapers were not profitable to him.

THE COURT: You are referring to allowances, that is 25 cents a hundred?

THE WITNESS: That moved through the years. I don't know the schedule. I believe it reached $1 a hundred on the daily and $2-1/2 a hundred on the Sunday but this practice was discontinued.

MR. ROTH: I don't like to make these motions to strike out but in this case I will.

He testified he never had dealings with Garfinkle or Strassman. He talks about vague recollections --

THE COURT: I want to straighten out my own record on this.

I thought you testified that in 1960 the price was $19 a hundred but there was a concession to Union News of making it 18.75 a hundred.

THE WITNESS: I think that was it. There is a schedule here that indicates exactly what the variations were. But that is my recollection.

Q Did Mr. Garfinkle at this meeting make any reference to the incident involving The Times and the World-Telegram earlier that year?

MR. ROTH: I th ink that the witness shouldn't be led this way. He was asked to state the substance of the conversation and I think he should go on to state the substance of it without being led by counsel.

THE COURT: That doesn't bother me. I will let him answer. It's a long time ago.

THE WITNESS: My memory is refreshed.

MR. ROTH: It's refreshed by depositions.

THE WITNESS: The memorandum that I wrote two or three days after. According to my own memorandum, I raised the question of the day that the Union News had --

MR. ROTH: I must object. He is talking about his memorandum and not his recollection. I would like to know which it is.

THE COURT: Where is the memorandum?

MR. ROSENBERG: I would like to exhaust the witness' recollection without the aid ofthe memorandum.

THE COURT: Mark the memorandum.

MR. ROSENBERG: The memorandum is marked Government's Exhibit 12 for identification.

(Government's Exhibit 12 was marked for identification.)

Q Mr. Veit, without now referring to that memorandum can you tell us in your own words the full import

of the conversation that you had at the New York Times in July of 1960 with Mr. Garfinkle?

A The substance of the conversation was after describing the squeeze that he was in that there had been a union escalation of salaries and that he had to explain to his directors within a short time why the newspaper division wasn't doing better. He suggested that an increase on the order of $2000 a year in our rebate our concession would be helpful to him.

At that point I said that no, we would not give one additional penny and I said, "It seems rather inappropriate" -- this is the substance and not the words -- "for you to ask this of us only a couple of months after you gave us a hard time on the metropolitan newstands".

I then asked him, "Do you have any other ideas" and he said that he did. That he would make available to us advertising space on his stands where we would promote The Times and as he talked about it he got quite enthusiastic about the idea.

He said it would be very high class, and I remember the gestures, not more than three publications, The Times and The News and one other class publication.

He mentioned The Saturday Evening Post. He said, "I will put up attractive frames and you buy

enough of these to make up the difference between your present concession to me and the extra $2000" --

THE COURT: Buy enough of what?

THE WITNESS: The display. He said he would put up frames and we could supply cards for prominent display on his stands.

MR. ROTH: May I ask whether they were cards or posters?

THE WITNESS: The 11 by 14-inch posters.

Q Did Mr. Garfinkle propose to you any other promotional device as a means of generating additional revenue?

A He only proposed that and he proposed it as a device to provide the differential. I told him that we would not buy them as a piecing out of the present system but we would consider it as a total package.

THE COURT: What did that mean?

THE WITNESS: It meant, your Honor, that the opportunity to have a prominent display such as he described on Union newsstands which are uniformly high traffic points struck me as being a very desirable promotion vehicle for us.

I was inclined to consider that we would buy enough of those in a great many stands at a sum large

enough so we could wipe out the previous practice of concessions and rebates and by advertising display instead.

THE COURT: Instead of this 25-cent differential?

THE WITNESS: Yes, instead of the varying differentials that existed during the years.

MR. ROTH: Is that part of the conversation on that date at that luncheon meeting?

THE WITNESS: To the best of my knowledge. There was no commitment. I said we would consider it.

MR. ROSENBERG: Can I ask that we divide up the direct and the cross-examination.

MR. ROTH: I just wanted to clarify.

Q Did you have authority to accept Mr. Garfinkle's proposal at the time that you were at this luncheon meeting?

A No, this would have to be approved by the then general manager, Amory Bradford.

Q Did you indicate to Mr. Garfinkle that his proposal was going to be treated in any particular way?

A That we would consider it with the variation that I had posed. Not as a piecemeal thing but as a total thing.

Q In the course of this conversation did Mr.

Garfinkle inquire of you or of Mr. Goldstein whether The Times had promotional agreements involving placards with other retail outlets where The Times was sold?

A No, there was no conversation about that.

Q Did Mr. Garfinkle ask you whether this practice was in existence with respect to any other newspapers?

A No.

Q Did he make any statement with respect to arrangements --

THE COURT: This happened 13 years ago?

THE WITNESS: Yes.

THE COURT: It's your best recollection?

THE WITNESS: Yes.

THE COURT: You say it's a fact. Did you say that?

THE WITNESS: I can't naturally say it's a fact but that is my best recollection, that this didn't enter into the conversation.

THE COURT: All right.

Q Do you recall whether there was any conversation involving Mr. Welkowitz at this luncheon?

A I can't remember any contribution that he made to the discussion at all. He was there but I can't say specifically any remark that Welkowitz made.

Q Following the luncheon of July 1960 did you make a memorandum summariving your recollections of the meeting?

A I did.

Q Let me ask you if Exhibit 12 for identification, which is before you now, is a copy of the memorandum which you made shortly after the luncheon meeting you have just described?

A Yes.

Q Was that memorandum made in the regular course of your business?

A Normal course of events.

Q Was it your regular practice to make such memoranda after meetings of this sort?

A Yes, if it was of management interest I always did.

MR. ROSENBERG: The Government offers Exhibit 12 for identification in evidence at this time.

MR. ROTH: If I weren't bound by it I would consent to it. I won't waive any cross with regard to it.

THE COURT: Do you want any voir dire now?

MR. ROTH: You offer it and for the moment I will have to object.

THE COURT: The point is --

MR. ROTH: I don't want --

THE COURT: I will reserve on it and you can go through it on your cross-examination. Let's hold it until you get a a chance to cross-examine and I will rule on it at the end of cross-examination.

MR. ROTH: Is that an original or what is it?

MR. ROSENBERG: This is a copy of a memorandum from Ivan Veit to Amort Bradford dated July 8, 1960 titled "Subject: Union News Company", and it bears what appears to be a handwritten signature of Veit at the end of the Memo.

THE COURT: Did you sign it?

THE WITNESS: Yes.

THE COURT: He says he signed it. I will reserve on it.

Go ahead.

Q Did you make any recommendations to Mr. Bradford or any executives at the New York Times with respect to Mr. Garfinkle's proposal?

A I rememended that we consider favorably the idea of purchasing display positions and to abandon the rebating concession practice on the basis that it was in keeping with our promotion practice and it would give us

a positive added value for the money we were spending.

Q Did you make any further recommendations to any other executives of the New York Times with respect to this proposal, that you recall?

A No, my dealings were with Mr. Bradford. Of course, Mr. Goldstein, the circulation director, and I were in touch on these things.

Q I ask you whether you can recall whether you had any conversations with Mr. Goldstein or Mr. Bradford after the time that you remmended acceptance of the proposal and before it was accepted?

A I don't remember specific conversations. As the record shows this pottered along for several months. It didn't seem to be a matter of great urgency.

The only other conversation that I recall at all was a very brief conversation I had with Louis Loeb who was our counsel at that time. I recall no other specific conversation about this.

Q Can you recall the substance of your conversation with your attorney, Mr. Loeb?

THE COURT: I don't know that we want to get into that.

You say Mr. Loeb was your lawyer?

THE WITNESS: Yes, he was counsel and at that

time he came up from Lord, Day & Lord each afternoon. He had an office at The Times.

Q During the period of time that this offer was under consideration at The times, did you or any other person at The Times have any discussions with other newspaper executives in the New York City area concerning the proposal?

A Not to my knowledge. I certainly did not.

Q Prior to the time that the offer was formally accepted, did you have any further discussions with Mr. Garfinkle or any other executive at Union News?

A There is one ambiguous point. In the letter Mr. Goldstein sent to Union News saying that we accept the idea there is, as I recall it, a reference to a second luncheon.

The letter isn't clear. I am not certain that it means a second luncheon or the one we have described.

If it means a second luncheon I don't recall it. I don't dispute that it occurred if Mr. Goldstein wrote about it in his letter. But there would be no other time when I would have had any contact with Mr. Garfinkle. That is, on business matters.

THE COURT: As you sit there you don't recall, after this luncheon meeting, having any other contact?

THE WITNESS: I do not.

Q When you spoke a moment ago of Mr. Goldstein's letter to Union News formally accepting Mr. Garfinkle's offer in which there was a reference to a second luncheon, are you referring to a letter which has been marked as Government's Exhibit 15 for identification?

A Yes, this is the letter.

Q What is the reference in there?

A The first sentence --

THE COURT: It isn't in evidence.

Are you offering this letter?

MR. ROSENBERG: Not at this time, your Honor.

THE COURT: That was the letter?

THE WITNESS: Yes.

THE COURT: All right.

Q At the time that the Garfinkle proposal was pending at the New York Times did The Times have any promotional agreements with any of the retail outlets under the terms of which The Times paid the outlet any sum of money or thing of value for the privilege of putting up promotional material?

A I believe there were three or four. I can't detail them. One of them would have been in the airport in Chicago where a display was purchased. I believe it

was at Midway, and another one at O'Hare.

I believe there was one at the airport in Washington. Whether there were any others, I can't say offhand.

Q Those are all that you recall at this time?

A That is all I recall.

Q Did The Times have a standard agreement with all of its retail outlets under which the terms of which the outlets were paid a stated amount of money for the privilege of allowing The Times to place posters at the stands?

A The posters I referred to before were put up without payment, the theory being that it would increase the sale and, therefore, the profitability of the stand.

THE COURT: Do you have any idea what percentage of the daily Times were sold to Union News back in 1960?

THE WITNESS: I believe Mr. Goldstein has the figures. The daily figure would be around 4000, according to my recollection.

THE COURT: His recollection doesn't agree with yours.

THE WITNESS: He was circulation director.

THE COURT: What was the circulation at that time?

THE WITNESS: The circulation of The Times in 1960 --

MR. ROSENBERG: That has been stipulated to between t he parties, your Honor.

THE COURT: I am just looking for information.

THE WITNESS: 8 and 900,000. It was well over a million on Sunday.

MR. ROSENBERG: Your Honor, at page 9 of the pretrial order the parties stipulated that in 1969 the New York Times had a Sunday edition circulation of over 1,400,000 copies and a weekday circulation of over 1,060,000 copies.

MR. ROTH: 1969?

MR. ROSENBERG: Yes.

Q Did The Times circulation increase or decrease during the 1960's, to your knowledge?

A It went up. We had strong increases in circulation.

THE COURT: Through the demise of the Telegram and of the Herald Tribune?

THE WITNESS: That was part of it but we had increases before that.

Q Was the Garfinkle proposal accepted by The Times?

A Yes.

Q Approximately when was it accepted?

A In early 1961.

Q Do you recall what the terms of the agreement were?

A Yes. The terms of the agreement were that we would display on 500 stands. That we would pay $2000 a month for 500 displays which, of course, was $4 per stand per month.

Q This payment of $2000 per month, was it exclusively for the right to put up posters at the Union newsstands?

A That is the sole purpose.

Q After the agreement with Union News was reached, did you or anybody under your direction take any steps to insure that the Union News Company carried out its part of the agreement?

A We did.

Q What did you do?

A We periodically our road men and inspectors check Union newsstands to see whether the displays were up as agreed.

Q Let me ask you if you can identify any of these three posters which have been marked as Government's

Exhibits 15-B-1, 15-B-2 and 15-B-3 for identification.

A These are all New York Times newsstand news posters. These two that have the slogan "You don't have to read it all but it's nice to know they are all there" were keyed into a newspaper promotion and radio promotion campaign prepared by an advertising agency. This was a backup for that. This would be one that we prepared in our promotion department.

Q Referring to 15-B-2 for identification?

A Yes.

Q Were these posters --

MR. ROTH: Which are posters?

THE WITNESS: They are all posters.

Q Are these the posters which The Times agreed with Union News Company to have posted at Union newsstands as promotional materiial?

A These are representative of the kinds of posters that were prepared for display.

Q Were these examples of posters that were distributed to Union newsstands during the period that the agreement was in effect, to the best of your knowledge?

A To the best of my knowledge.

MR. ROSENBERG: The Government will move to have Exhibits 15-B-1, 15-B-2 and 15-B-3 received in evidence at

THE COURT: Any objection?

MR. ROTH: I have no objection subject to cross.

THE COURT: I will receive the posters.

(Government's Exhibits 15-B-1, 15-B-2 and 15-B-3 were received in evidence.)

xx Q I believe you testified a few moments ago that you did take steps to insure that Union News carried out its part of the agreement.

To the best of your recollection today, were the posters that the New York Times caused to be printed actually posted at the Union newsstands?

THE COURT: He hasn't any recollection of that at all. He said he sent his road men out.

You didn't go around looking to see if they were posted?

THE WITNESS: We had reports. Of course, I observed in my travels around New York --

THE COURT: You were a commuter?

THE WITNESS: At that time I traveled in New York. I saw only the subway stands.

THE COURT: All right.

MR. ROTH: What time are we talking about?

THE COURT: Early '61.

MR. ROTH: Are these posters 1960 too?

MR. ROSENBERG: 1968 and '69.

THE COURT: I am glad you mentioned that. I thought these were 1961.

How long did this arrangement continue?

THE WITNESS: It continued although it limped part of the time. It continued until, I believe, 1969.

Q Did there come a time in the winter of 1962-63 when The Times ceased publishing for a while?

A We had a 114-day strike.

Q Was there any change in the retail price of the New York Times at the end of the strike period?

A Yes. The 5-cent paper daily became the 10-cent paper.

Q At or about the time of the ending of the strike in early 1963, did you have any discussions with any representatives of the Union News Company concerning your poster agreement?

A No.

Q Do you recall whether the poster agreement was modified at any time after it was entered into in early 1961?

A Yes, it was modified. The number of stands at one point, and I can't tell you the date, was increased

to 528 and we increased the payment per stand from $4 to $4.90 per month.

There were other unilateral changes made by Union News which we rejected.

THE COURT: You say increased from $4 to $4.98?

THE WITNESS: $4.90. The number of stands to be covered from 500 to 528.

THE COURT: Do you have any recollection of the approximate time or year when this agreement was modified, as you indicated?

THE WITNESS: I don't remember the year.

Q I show you what has been marked as Government's Exhibit 22 for identification, a two-page document, and ask you whether that refreshes your recollection as to the approximate time and date of the modification?

A This would indicate 1963.

THE COURT: Would that refresh your recollection as to whether it was 1963?

THE WITNESS: Yes.

THE COURT: We will take a short recess.

(Recess.)

Q After the poster agreement went into effect, Mr. Veit, did you have any further conversations with

Mr. Garfinkle or Mr. Strassman or any other executives of the Union News Company concerning the poster agreement?

A No.

Q Did you receive any correspondence, to the best of your knowledge, concerning the poster agreement from the Union News Company?

A No.

Q I show you what has been marked Government's Exhibit 61-3 for identification and ask you if you can identify what that is a copy of?

MR. ROTH: What is the date and what is it?

THE COURT: He has to identify it.

A I don't recall having seen it until just this past week.

MR. ROSENBERG: This is a copy of a letter, your Honor, on the American News Company's stationery dated Octobe r 24, 1962 addressed to Gentlemen and signed Herbert Frilen, executive vice-president.

THE COURT: He doesn't recall seeing that at that time, is that correct?

THE WITNESS: That is correct.

Q Have you had a chance to read the letter?

THE COURT: Why do you want him to read it?

MR. ROSENBERG: I wish to ask the witness

whether at any time the remarks made in the body of the letter were ever made to him.

THE COURT: If he has any recollection of it.

THE WITNESS: No.

MR. ROSENBERG: This is Exhibit 3 attached to the defendant's answers to the interrogatories.

THE COURT: I would like it marked for identification.

MR. ROSENBERG: It has been marked for identification.

THE COURT: Okay.

What exhibit is it?

MR. ROSENBERG: 61-3.

Q Mr. Veit, if such a letter as Exhibit 61-3 had been sent to the New York Times on or about the date it bears, October 24, 1962, would it have come to your attention?

MR. ROTH: I object.

THE COURT: I will sustain the objection. He said he didn't get it.

Q Did you receive any comparable notification from the Union New Company regarding its relationship to its suppliers --

THE COURT: I don't know what comparable means.

Do you remember receiving any ntofication from the Union New Company on this subject?

THE WITNESS: No, your Honor.

Q At any time during your period within the circulation and promotion departments of the New York Times, from 1961 forward, did any executive or other representative of the Union News Company ever inquire of you whether the New York Times had proportionately equal agreements for the display of posters with any of its retail outlets?

A No, not to my recollection at all.

MR. ROSENBERG: I have no further questions of this witness.

CROSS EXAMINATION

BY MR. ROTH:

Q Mr. Veit, do you have any other posters?

A I don't. I suspect there are some in our files. I don't know.

Q Will you ask your office to produce them tomorrow, any other posters submitted to the Union News in connection with this transaction we are talking about.

THE COURT: I don't know whether that is material. He identified these particular posters as being some of them. I don't think we need all the

posters.

MR. GREENFELD: If I may be heard to save time, I can indicate that there are no other ones.

MR. ROTH: That is exactly the point.

MR. ROSENBERG: If I may clarify the record --

THE COURT: Let's not clarify the record. Let's proceed with the questions.

MR. ROSENBERG: There is an error in the record. There are further posters which we would be happy to produce if they would be prbative of anything.

Q Over a period of how long was this transaction going on, to your knowledge? You testified from 1960, was it?

A 1961.

Q 1961 through at least 1969?

A Yes, sir.

Q These posters were delivered to the retail trade generally, weren't they?

A Some of them.

Q Were any ofthem delivered to Union News and nobody else?

A Yes.

Q Which ones?

A I don't know.

Q How do you know then?

A I know the practice.

Q Which ones would be?

A I can't identify which ones. I merely know the practice.

Q How do you know the practice?

A Because the promotion department during that period reported to me and the practice was to produce something over 500 posters per month for Union News. Some of them of sufficient importance we printed in larger quantity for general distribution.

Q Is it your statement that every single month 500 posters were delivered to Union News?

A That was the general practice.

Q Have you got any records to show that practice?

A I am sure it was discontinued during the 114-day strike.

Q But every single month or week -- how long was it?

A Eight years.

Q And the posters were supposed to be put up?

A That was the agreement.

Q You expected them to be replaced each time?

A That was the agreement.

Q How many newsstands were there that sold The Times?

A I don't know how many.

Q Were there 200?

A I don't know but there were more than 200.

Q Were there 500?

A I don't know but that isn't the point.

Q You know there were a lot less than 500.

THE COURT: Don't argue with the witness.

MR. ROTH: This is something --

THE COURT: Please don't argue with the witness.

Q You know there were a lot less than 500 newsstands.

A I knew nothing of the kind. Mr. Garfinkle said, "We will give you display on 500 stands. We will put up the frames. You will have a first class display."

We had to provide the frames. Union News never provided the frames, we did it. I assumed that we were getting displays on 500 stands.

Q What was your job?

A Assistant business manager.

Q Let's get the chronology from 1960 on.

A In 1957 I became assistant business manager. I am not sure of the exact date when the title was changed

to business manager but it wasn't a change in function.

Q During this entire time you assumed there were 500 newsstands, Union newsstands, selling The Times?

A There were 500 Union newsstands.

Q You wouldn't put placards up where they weren't selling The Times.

THE COURT: You are arguing with the witness and not doing anything for me.

Q Referring to the memorandum of July 8, 960 which was marked for identification, a memorandum from you to Mr. Bradford --

A Yes, sir.

Q It says at the beginning that:

"A few days ago Bill Welkowitz of The News, Nat Goldstein and I had luncheon here with Henry Garfinkle and his lieutenant, Morris Strassman."

Who invited Bill Welkowitz?

A I don't know whether it was Mr. Garfinkle or Mr Goldstein. Since we were host I would assume Mr. Goldstein.

Q Wouldn't you be interested in why Mr. Welkowitz was present at a discussion with Mr. Garfinkle about rebates or special allowances?

MR. ROSENBERG: Objection.

THE COURT: I will sustain the object to that.

MR. ROTH: We have a question of a luncheon.

THE COURT: Don't go into that. He said he was there. He doesn't know who invited him and he was there.

MR. ROTH: What was the purpose of his being there?

MR. ROSENBERG: Objection.

THE COURT: If he has any notion of why he was there he can answer it. He said he didn't invite him though.

Do you know why he was there?

THE WITNESS: I don't know why. I can hazard a guess.

THE COURT: Don't guess.

9 Q You testified that you at no time before or after had any business discussions with Mr. Welkowitz?

A Correct.

Q And Welkowitz was there while this discussion took place?

A Yes.

Q While you discussed all the matters mentioned in this matter to your recollection, is that correct?

A Yes.

Q Does The News in any way compete with The Times?

A Yes.

Q It competes for morning circulation, does it not?

A To an extent.

Q Does it compete for the space on the stands?

A There is no competition. There is room for both.

Q Do you ever exchange information with The News with respect to prices, things of that sort?

A No.

Q Yet Mr. Welkowitz was there listening to a discussion --

MR. ROSENBERG: Objection.

THE COURT: I know he was there. It doesn't help me to keep on mentioning it.

Q You say later:

"To be sure, Garfinkle left no detail undramatized in depicting his plight but both Welkowitz and Goldstein th ink that Garfinkle's presentation is essentially correct."

So at that point Welkowitz expressed himself, isn't that correct?

A I don't know whether he expressed himself at

that moment or expressed himself to Mr. Goldstein later but the opinion was expressed.

Q You reported this expression to Mr. Bradford?

A Yes.

Q And Mr. Goldstein at least expressed himself as saying that the presentation was essentially correct?

A Yes.

Q And the presentation was what?

A The presentation was that his expenses were high, that they were now higher because of a union increase and that newspapers were one of his least profitable items.

Q The memorandum goes on to say:

"There is another important factor involved in Garfinkle's approach. It seems quite obvious to me that his pride is also involved. So far as we know, his recent pressure on The Times and World-Telegram ended in the only defeat he has ever experienced in this sort of warfare."

What defeat were you talking about?

A He was at that time seeking more money. Previous to the episode in May when The Times and World-Telegram were removed from sight he had said that he would have to increase the price of The Times in the country area.

The country area is outside the 50-mile metropolitan area. At that time Mr. Bradford wrote a letter to Union News saying --

Q Let's not talk about letters. I am talking about what was the defeat.

A No concession was obtained from The Times.

Q You are talking about that May 1960?

A About the 10-day period. No concession was attained and he restored us to the situation ante.

Q Then you told him, according to this memorandum:

"I told him that he and Union News were not in particularly good repute here for having singled us out. I told him also that we were already making substantial concessions to Union News, concessions which we were dubious about and had even considered stopping and anything more in the nature of the allowances he is now receiving is out of the question."

You said that the concessions you were making were then dubious. Who told you they were dubious?

A We considered that they were dubious because at that time the question had been raised in the magainze field by the Federal Trade Commission pertaining to

magainzes only but the existence of this inquiry let us to question our own concessions to Union News.

Q Did counsel give you any advice?

A Not at that time.

Q You go on to say that:

"Garfinkle made quite a point of the value of Union News to us and similarly to The News. One, he gives the best display to The Times and News on all his key stands out of town. This is correct, he does."

At that time you mentioned The News as well. Isn't it fair to infer that Mr. Welkowitz was there as part of a joint negotiation or discussion regarding rebates or concessions?

A There was no negotiation, none.

Q It was a discussion.

A To the point where I said no and there was no discussion.

Q As outlined here.

A That is right.

Q Then you go on to say that one of the points he made was that:

"We are favored to the exclusion of other papers, even local papers. Boston newspapers,

for example, will supply copies free for New York airport stands just to get on. Garfinkle won't take them."

Do you recall that statement?

A I recall that statement.

Q And then 3:

"Any other means of distribution at his traffic point would cost more than Union News. Independent operators, he says, could not survive because without his buying power on candies, gum, et cetera, and consequent discounts, they could not meet expenses."

Do you recall his making that statement?

A Yes.

Q Then you go o n to say in this memorandum:

"It is hard to think about this situation with complete objectivity in view of our recent experience with Garfinkle. If we can ignore the harsh treatment he tried to give us, the situation does deserve some consideration. The payments we are already making and have made for several years are, in reality, an acknowledgment of the fact that we recognize his costs and the service we receive."

Is that correct?

A That is correct.

Q "Telling Garfinkle that we would not increase rebates by a cent, I asked him if he had any specific proposal in mind. He did. He suggested that he make display sign space available to The Times and The News on any number of his stands we wish to select. We could buy this space at nominal rates, he says, get promotional benfit from them and give him what he urgently needs."

At that point he was getting, according to his testimony, about 22, $23,000 a year by reason of the allowance on price, is that correct?

A That is approximately correct.

Q How much more was he suggesting that you add to it?

A My recollection is about $2000.

Q So that at that point the issue is about $2000 additional, right?

A Yes.

Q A year?

A That is right.

Q "I have been th inking about Garfinkle's proposal and I believe that we should adopt it but

carry it much further than he apparently has in mind. I would buy enough of these propotion signs at a high enough price, not only to give a modest increase to Union News but to cancel out the rebate structure which has been established. In other words, I think we should take these display spaces for something like $25,000 a year and stop all rebates."

What you were claiming to do was take the old rebates of 22 or $23,000 and label them as well? Label them as poster payments as well, isn't that correct?

MR. ROSENBERG: Objection.

A No.

Q You were willing to pay him and continued to pay him 22 or $23,000 for what you agreed on before was something that was worthwhile?

A Right.

Q And was worth 22 or $23,000 to you?

A Yes.

Q That same situation continued after that, did it not? In other words, the same circumstances which led you to provide him with 22, $23,000 continued thereafter, did they not?

MR. ROSENBERG: Objection.

THE COURT: I will sustain the objection to the form of the question. The purport of all this is that from a dollars and cents point of view the new arrangement didn't cost The Times much more than before. It cost about the same thing but the form of the arrangement was different.

THE WITNESS: And the direct benefit would accrue.

Q You were paying approximately $2000 more for those direct benefits?

A The new price for the displays was $2000 a month so it netted to $24,000 a year.

Q But that included the very benefits that he gave you before that, didn't it?

THE COURT: I don't know if it follows. You were getting special service by the display, is that right?

THE WITNESS: The display, the sale of the paper continued as it had in the past.

Q After the arrangement was made the same circumstances, the same facts regarding the operation of Union News, were in existence and continued as before you made the arrangements, isn't that right, with the exception of the posters?

THE COURT: I don't understand that. This is getting confused.

As I understand it, the new arrangement would take the place of the old discount, is that correct?

THE WITNESS: Yes.

Q It was to take the place of it formerly. I am trying to show that actually -- and we will prove that --

THE COURT: You can't prove it through this witness.

MR. ROTH: We are going to prove it in this way. The facts will show it. From the time that the new deal went into effect nothing changed as far as Union News was concerned except the posters, isn't that right?

A Union News continued to sell the New York Times.

Q In the same way and the same things that we said before in this memorandum about the Union News' operation before which warranted the paper for 22 or 23,000 --

THE COURT: You are just confusing the record. That is not helping me at all.

MR. GREENFELD: I would like to object. The witness has testified that there had been this FTC investigation.

THE COURT: I understand that. He is not convincing me of anything. As I understand, the witness said this was a new arrangement with Union News and the money hasn't changed too much but you got rid of the discount and you made the new arrangement and you got display space and you provided the papers. Don't argue.

Q The figure of $25,000 --

A $24,000.

Q How was it set?

A As you will recall from my memorandum, I recommended a small increase in revenue for Union News. We hit on the figure 24,000 or $2000 a month.

Mr. Garfinkle said that he would supply display space on 500 stands so that the cost to us per stand was $4 per month.

Q Would you say that it isn't a fact that you figured out the 500 stands at $4 a month, to come to $24,000 a year and work backwards from $24,000 a year to $500 at $4?

A No, sir. The arithmetic was just opposite of that. The $2000 was divided by 500 and it came out $4 per stand and I compared that price with the price that we paid for other poster displays.

Q And if Mr. Pat Reynolds' testimony says the opposite he is completely incorrect, is that right?

THE COURT: I sustain the objection to that.

If there is any other testimony I will hear it. That is your understanding and that is what I am interested in.

THE WITNESS: Yes, your Honor.

MR. ROTH: Mr. Reynolds' testimony will be in the case.

THE COURT: Let's not bother about that. That is his testimony.

Q Then you go on to say that:

"The advantages to us are twofold. One, we get out of the rebate business which I think is a desirable objective. Two, if two or three years from now circumstances suggested to us that we should break off any favored treatment for Union News it would be easier to discontinue buying signs than to stop a rebate. Three, we would get promotional benefit out of the signs which could be changed for special news events if we wished. We get nothing for the present rebates."

These are statements you made.

A Right.

THE COURT: At this point I will receive that in evidence.

(Government's Exhibit 12 was received in evidence.)

xx MR. ROTH: MAY I have the document marked Exhibit 16 from the Federal Trade Commission?

MR. ROSENBERG: Certainly.

MR. ROTH: May I have this marked for identification?

MR. ROSENBERG: It is marked for identification.

Q Have you seen this document marked for identification No. 16 here which is a memorandum --

THE COURT: I don't think it's marked for identification.

Mark that for identification as a defendant's exhibit.

(Defendant's Exhibit A was marked for identification.)

xx Q Have you seen this document before?

A Yes, I have seen it. Not recently but I have seen it.

Q You have read the document?

A Yes.

Q This document is a memorandum from Mr. Goldstein to Mr. Bradford, correct?

A Yes.

May I ask the date of that memorandum?

Q April 21, 1961. This is what it says at the beginning just as a matter of introduction --

THE COURT: Are you offering it in evidence?

MR. ROTH: I am going to ask him questions about it. I would rather ask him questions about it because it has historical material in it.

"Yesterday we sent out letter to Mr. Strassman of Union News Company notifying the company through him that we were simultaneously discontinuing the special price structure to Union News and initiating the payment of $2,000 per month for newsstand card advertising on 500 of their newsstands. For clarification, I am listing in this memorandum a chronology of the special price concessions given to Union News since 1950 and the recent difficulties with them. These difficulties are manifested either in strikes or sales inhibitors to force price concessions."

Then there is a list of discounts and rebates which I will refer to later. There are some references

with your difficulties with Union News. It says that:

"Beginning in the middle of March 1960 we began to hear from our country road men to the effect that Union News was going to raise the news-stand cover price without the publisher's consent."

Is that a correct statement of the facts as you recollect them?

A I didn't make the statement. It's probably correct.

MR. ROSENBERG: Can the witness be shown a copy of the memorandum?

THE COURT: Yes.

Q We are talking about the country price. What is the country area?

A The country area is the area beyond the 50-mile New York metropolitan area.

Q That would include outlying cities?

A Any place outside the 50-mile area in the United States.

Q At that time what was the cover price for the country area?

A I don't know.

Q Was it h i gher than the city price?

A I don't know that it was then. I would have

to check. Sometimes the country price was higher than the city and other times it's the same. I don't know what it was in 1961.

Q Let's take during the period that you were in office there. The country price would be printed separately on the newspapers sent out?

A If there was a differential it would say so much in New York, so much beyond the New York metropolitan area except for Long Island, and it will also say frequently higher than air delivered cities.

Q The statement says that they were going to raise the newsstand cover price without the publisher's consent.

Was it a practice to get the publisher's consent before getting the country price?

A It wasn't a practice to get the publisher's consent. One of the factors in the payments to Union News was their statement that unless we get more money our only recourse is to raise the price.

We had the belief that the concessions that we were making to Union News made it unnecessary for them to, in addition, raise the price of The Times beyond the cover price.

Q In other words, among the values The Times was

receiving for the discount before the new arrangement was the maintenance of the country price?

A As other stands did.

Q They pretty well kept the country price after 1960, '61 and through '69, did they not?

A I believe so. I don't have that record.

Q Then it goes on to say:

"All road men were alerted, but nothing developed until Saturday, April 9, when many but not all of the country Union newstands displayed a 12-cent daily price."

Do you recall that?

A Vaguely.

Q Would that indicate there was a 10-cent country price at that time and it was raised to 12?

A Yes.

Q Where did the Union newsstands extend? What areas of the country did they cover?

A I don't know. They were in a great many states. They were widely dispersed. How far they went I couldn't tell you.

Q They went out to the Middle West, did they not?

A Yes.

Q Down South?

A Yes, New England.

Q At the time that the country price was being established and get at the single rate -- I will withdraw that.

Do you know when there was a dispartiy between the country price and the city price?

THE COURT: Does he know when?

MR. ROTH: At what times there was a disparity.

A I would have to check the records.

Q Was there a disparity in 1969?

A I would have to check the records.

THE COURT: You don't recall?

THE WITNESS: No.

Q Let's take 1966 --

THE COURT: He doesn't recall.

A I will say the same thing for any year.

Q As a matter of information what is the disparity right now, if any?

A There is no disparity on the daily. On Sunday the price in the metropolitan area is 50 cents. Beyond the metropolitan area it is 75 cents.

Q But the regular Times is sold at 15 cents daily?

A Yes, that is the standard price.

Q That is the regular price that you expect your dealers to maintain, right?

A Yes.

Q And the Union News is doing it right now?

A I hope so.

Q Charging 15 cents in Washington, wherever they are?

A I hope so, yes.

Q What was your interest in keeping the price down? What was the interest of The Times in keeping the price at either the cover price or the regular city price?

MR. ROSENBERG: Objection, your Honor.

THE COURT: You mean what was the interest of The Times, was it the metropolitan price --

MR. ROTH: Or to keep a metropolitan price.

THE COURT: I suppose they wanted to sell papers.

THE WITNESS: There is a threshold of resistance in the price of papers, a lower threshold than we like to see. A higher price means lower sales.

Q Would it also have any effect on whether or not people would then choose local papers at lower prices?

A That might be a by-product of their resistance

to the new price.

Q That is an automatic result, of course.

MR. ROSENBERG: Objection.

A If they buy another paper.

Q Then this memorandum goes on to state that:

"On April 10 we discontinued our daily and Sunday supply of approximately 4000 daily and 3500 Sunday."

We discontinued. So that the next day, on April 9, the price of the country was raised in some of the newsstands to 12 cents but on April 10 we discontinued our daily and Sunday supply of approximately 4000 daily and 3500 Sunday.

Was that discontinuing country newspapers?

A Discontinuing the supply of The Times to the Union newsstands in the country area.

Q Which was about 4000 daily and 3500 Sunday then?

A Yes.

Q During the first week of the cutoff our losses ran approximately 54 per cent daily and 52 per cent Sunday.

Was that about correct?

THE COURT: 54 per cent and 52 per cent of what?

THE WITNESS: The normal sale. We lost about half of the sale.

THE COURT: Through these outlets?

THE WITNESS: Yes.

Q By reason of your discontinuing any delivery to those outlets?

A Right.

Q Those were the Union News outlets in the so-called country area? Is that correct?

A Yes.

Q "This percentage of loss was reduced each week as readers began to buy from alternate outlets. In May Union News returned to cover price and orders were resumed for sale May 14."

So that when they returned to the cover price, which apparently was 10 cents, you resumed delivery, is that correct?

A That is what it says, yes, sir.

Q Under the heading of strikes there is -- I won't cover that in detail at the moment with the statistics which we will get to.

It says;

"Net effect of strike on sale during the strike period, city, 2800 copies lost per day average, and

the suburban, 2000 lost per day average."

What was the purpose of the reference to the losses during the strike period?

MR. ROSENBERG: Objection. We are going very far afield.

THE COURT: I am a little troubled with all this. This is a memorandum from Mr. Goldstein to Mr. Bradford. I really think we are going far afield on that.

MR. ROTH: He testified and opened the door to a situation in May.

THE COURT: I will sustain the objection.

MR. ROTH: I will be through with this in a couple of minutes.

Q "In May of 1960 Union News in tactics similar to what they had started in the country division in April withdrew The Times from regular counter display from May 3 to May 13. The net effect of this withdrawal was, city, 700 copy loss per day average and, surburban, 400 copy loss per day average."

Is that correct?

THE COURT: That is what the memorandum says.

MR. ROTH: He testified before to the figures.

THE WITNESS: My recollection was that the total was 1500. This would indicate only 1100.

Q "We now have a complete record of every Union News outlet in the country, its draw and the alternate outlets we would use in substitution should it become necessary for us to do so. Of course, during such a sales transition" --

THE COURT: It isn't any good to have you reading this memorandum.

Q Isn't it a fact, Mr. Veit, that the purpose of this memorandum was to discuss the question of what would happen if Union News wanted or took any action seeking to get a higher rebate or a higher price for its sales, retail price for the sale of a newspaper, what you would do to offset it?

MR. ROSENBERG: Objection.

THE COURT: I will sustain the objection. I don't know if this is helping. You are taking this memorandum of Goldstein and Bradford and talking to this witness about all these things. This isn't helping me a bit.

MR. ROTH: I will offer it in evidence.

THE COURT: You have no objection?

MR. ROSENBERG: None at all.

(Defendant's Exhibit A was received in evidence.)

MR. ROSENBERG: The author of the memorandum is in court, your Honor.

THE COURT: All right.

MR. ROTH: This document from Ivan Veit to Mr. Bradford, can I have this marked?

(Defendant's Exhibit B was marked for identification.)

Q Do you recall this memorandum dated October 10, 1960?

A I have it here.

THE COURT: Is that 1960?

MR. ROTH: Yes.

Q This proposal you talked about in connection with the luncheon meeting which took place in July was then considered for quite a while, wasn't it?

A It wasn't considered during an entire period. It had very lower priority and it pottered along. This was three months later.

Q Did you refer it to counsel?

A I didn't refer it to counsel. Counsel was consulted.

Q You have the memorandum in front of you and

it says that:

"I referred the proposal that we use promotion posters on Union newsstands back to Louis Loeb."

A My best recollection is that I sent to him the memorandum of July 8 which we have been talking about.

Q You say that you referred them back to Louis Loeb. Was there a discussion with Mr. Loeb before you had the meeting of July 8, 1960 regarding the legality --

THE COURT: Did he have a discussion?

MR. ROTH: Yes.

THE COURT: Did you have a discussion with Mr. Loeb before you had this luncheon, do you remember?

THE WITNESS: I had no discussion with Mr. Loeb before the luncheon.

Q Was this a matter taken up with Mr. Loeb?

THE COURT: He said he didn't take it up with Mr. Loeb.

MR. ROTH: He took it up with Mr. Loeb afterwards.

THE COURT: But not before.

MR. ROTH: I am not going on to it before.

THE COURT: The time wasted here is colossal. Did you take it up with Mr. Leob after the

meeting?

THE WITNESS: I had one brief discussion with Mr. Loeb after the meeting, accidental and casual. It was at Mr. Bradford's office. It was a standing up conversation which lasted two or three minutes.

Mr. Loeb had seen the memorandum of July 8 and he expressed the opinion that the new plan would be preferable to the old and that ended the conversation because he was there to see Mr. Bradford about other things.

Q The second sentence of the memorandum says:

"Mr. Loeb then repeated to me the original judgment that there is no objection to the poster proposal."

A I said that in the conversation he said that the poster proposal would be okay. That is was better than what we had been doing in the past.

Q Then it goes on to say:

"On the contrary, the lawyers think it is a vast improvement over our present practices with regard to Union News."

THE COURT: What is that? What are we getting at?

MR. ROTH: The facts here.

THE COURT: What is the statement?

Q "On the contrary, the lawyers think it a vast improvement over our present practices with regard to Union News."

THE COURT: Fine.

Q Did they tell you to that effect?

MR. ROSENBERG: I object. I don't see the relevance.

THE COURT: It's in the memorandum and it's wasting a lot of time really.

Q The memorandum refers and you referred to a painting of newsstands and installation of promotion of signs and to installing windows.

Do you know how much was spent in any particular instance on that?

A I would have known at the time.

Q Were you familiar with what was happening at the Chicago Airport?

A In a general way. I had no part in the negotiations but in a general way I knew what was going on.

MR. ROTH: I offer this memorandum in evidence.

MR. ROSENBERG: No objection. I would note

that we have already discussed in our memorandum of law that questions of the advice of Times' counsel to The Times are wholly irrelevant to this case.

THE COURT: I think that is right except in so far as it follows the advice of counsel. But I will receive it.

(Defendant's Exhibit B was received in evidence.)

xx Q Who originated the idea of substituting the previous rebates, allowances, with this overall concept of posters?

MR. GREENFELD: I believe this is reaching harassment.

THE COURT: Was it your idea?

THE WITNESS: It was my idea to extend the piecemeal suggestion of Mr. Garfinkle to a complete substitution.

THE COURT: Okay.

Q How much was given to a party in the Chicago Airport? How much was given to an operator of a stand in the Chicago Airport?

A I would have to check the records.

Q Would it refresh your recollection if I told you first it was $35 a month at that time?

A It sounds like a familiar figure.

Q And jumped to $50 a month for one stand.

A That could be. I am not sure for one stand. There were several stands.

Q Suppose it was from one stand.

THE COURT: Please. You are starting all over again. This is a lot of chatter.

MR. ROTH: This is an important point.

THE COURT: Don't go galavanting around. He says he thinks the figure may be right.

Q On the basis of $50 per month for one stand how much is that a year for one stand?

A 12 times 50.

Q How much is $4 a stand?

MR. ROSENBERG: I object.

THE COURT: This is really childish. I really don't know what good this is doing me.

MR. ROTH: They were paying somebody $35 a month--

THE COURT: He said that.

THE WITNESS: It was not for one stand. There was one display but several stands in the airport.

Q Let's go to Grand Central Station, for example. You are familiar generally with the situation there, aren't

you?

A Yes.

Q Union News has the stands and had during this period inside the stations?

A Correct.

MR. ROSENBERG: What period is this?

MR. ROTH: The entire period we are talking about.

THE WITNESS: '61 to '69?

Q Yes.

What stands were located immediately outside the station?

A There were some street stands.

Q Let's take Lexington Avenue. Weren't there some men that at rush hour sold from boxes newspapers and magazines?

A Yes.

Q And on the 42nd Street side there were two entraces also covered that way?

A Yes.

Q And in the Pan-Am Building there was at least one stand at the entrance to the escalator, is that right?

A I am not familiar with that but it certainly should be there.

Q You referred in your testimony to the special situation of Union News which prompted you, among other things, to accede to the original rebate or allowance. To your knowledge, what sort of hours did the Union newsstands in Grand Central keep?

MR. ROSENBERG: I object.

THE COURT: I don't think he is qualified to answer that.

Q Are you familiar with the allowances given to the Otistene group in Washington?

A I don't know what you are referring to. Are you referring to the airport or home delivery?

Q Let's take the airport first.

A I just know that there was an allowance. I don't know the amount.

MR. ROTH: I have no further questions of this witness.

THE COURT: Any other questions?

One thing I am missing here and if the Government is going to do it, do it soon, I don't know yet what order of the Federal Trade Commission or of the Court of Appeals this proceeding relates to. All I hear is a lot of testimony about wha the Union News and the Times are doing back in 1962 and probably much further. I want to

know what the Government's position is on that.

Are you going to put those in?

MR. ROSENBERG: We have stipulated in the pre-trial order to the language.

THE COURT: I have that but I would like to see the order.

MR. ROSENBERG: We will produce the original order.

13 THE COURT: I would like to see the Court of Appeals' order and the Federal Trade Commission.

MR. ROSENBERG: We have certified copies of both and we will produce them.

THE COURT: I would like them produced.

MR. ROSENBERG: I have no redirect of Mr. Veit.

THE COURT: You are excused.

(Witness excused.)

MR. ROSENBERG: The Government's next witness is Nathan Goldstein. He is a long witness. Perhaps we ought to break now.

THE COURT: Let me meet Mr. Goldstein. Perhaps it will shorten his time this afternoon.

Let's go until one o'clock.

MR. ROSENBERG: The Government calls Nathan

Goldstein.

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N A T H A N G O L D S T E I N , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ROSENBERG:

Q By whom are you employed, Mr. Goldstein?

A The New York Times.

Q How long have you been employed by The Times?

A 49 years.

Q Could you briefly summarize your history at the New York Times, sir?

A I started in the month of May of 1924 working at nights after school in the incoming mail room and then proceeded on to work in the publication office of The Times at night until about 1930 where I became an assistant to the retail advertising manager and in October of 1935 I was made publications manager of the New York Times and on November 15, 1948 I became circulation manager and some time in 1960 I became circ-lation director and in January 15th I became special assistant to the publisher.

THE COURT: Of this year?

THE WITNESS: Yes, sir.

Q What were your duties respectively as circulation manager and circulation director of The Times?

A I directed the distribution, the sale, and assisted in the promotion of the New York Times, daily and Sunday.

Q Were there any differences in your responsibilities betwen the two positions, circulation manager and director?

A In 1960 I reported to a circulation manager who took care of the day-to-day operations. I emphasized more in sales.

Q Who was your superior in 1960?

A Harold Hall, who was the business manager.

Q What was your relationship on the corporate structure to Mr. Veit?

A We worked together on the promotion side of the paper. In developing sales, tnat is.

Q Mr. Goldstein, did you have occasion in 1961 to review the New York Times' relationship with the Union News Company with respect to discounts and rebates?

A Yes.

Q I show you what is now Defendant's Exhibit A in evidence and ask you if this is a copy of a memorandum

prepared by you?

A Yes, it is.

Q Let me draw your attention to the last page. At the foot thereof there is a date of April 21, 1961.

A Correct.

Q Is it your recollection that that is the approximate time when you prepared this memorandum?

A In that period.

Q Does this memorandum accurately reflect, to the best of your present recollection, the history of rebates and discounts that The Times had with the Union News Company?

A Yes, for effective dates.

Q The period covered by your memorandum, at least on the first page, is 1950 to 1960.

I wonder if you can recall whether the New York Times had any price allowance agreement or rebate agreement with any other retail outlets in the metropolitan New York area?

A No.

Q Do you recall whether there were --

THE COURT: You don't recall or it didn't?

THE WITNESS: To my best recollection, I would say no.

Q What about nationally?

A Nationally there were.

Q Can you recall any in particular in the period 1950 to 1960?

A There was the Armstrong group in Boston that had a price differential and if I can recall correctly, I believe there is a price differential in a small segment of our Chicago circulation.

Q Do you have any knowledge as to the approximate number of newsstands at which the New York Times was sold throughout the nation in this decade, 1950 to 1960?

A Yes. We sold to about 17,000 in the metropolitan area and I would say our distributors beyond the metropolitan area had equally as many if not just a little less because of the greater number of states we covered.

Q Approximately how many of these stands, if you know, are stands which the New York Times had a price allowance agreement in this decade?

A None other than the Union News and Armstrong and a wholesaler had an allowance for a few fealers in Chicago.

Q Turning now to approximately the year 1960, were you familiar with the means by which The Times was sold to its wholesalers and its retail outlets?

Q Could you describe the method by which The Times was physically delivered to the wholesalers and the distributors and also the method by which they were billed?

A Yes, other than our direct delivery which was on the lower west side of Manhattan and extended from Fifth Avenue to the river and north to 125th Street and the River, that was delivered direct and billed direct by The Times.

All other was distributed to the loading docks or distributed to wholesalers in the city other than the areas I described. They came to our loading docks on 43rd and 44th Streets and picked up the bulk number of copies.

Concentrating on the cities so we don't confuse anyone, they in turn would take the copies back to their plants, break them down to the numbers or copies they have orders for for the individual retail dealers. They in turn would bill those dealers for the copies they received and give them full credit for the unsold copies.

In the suburban area we would truck the bulk number of copies to each individual suburban wholesaler. They also in turn would break down the number of copies needed for the various independent, individual dealer or home delivery routemen and bill accordingly. We would

receive one payment from the wholesaler for all these copies.

THE COURT: Would you credit the wholesaler on the copies that weren't sold?

THE WITNESS: Yes, the wholesalers would credit the unsold copies after they were picked up. They would count them physically and they would submit to us a bona fide affidavit.

THE COURT: And you credit that against their total bill?

THE WITNESS: Yes.

Q Does the phrase "pink ticket system" have any particular meaning in the newspaper circulation field?

A Yes, that was primarily and only with the Union News Company.

Q Would you describe how that worked?

A A pink ticket was an authorization or an acknowledgment from the individual newsstand operator of a union newsstand that would be submitted to The Times of the number of copies he had received and then also he would indicate the number of copies that were unsold and they would be returned to the plant of headings would be returned to the plant.

Q Just to clarify for a moment, Mr. Goldstein,

would the number of returns which were indicated on the slip also contain the number of deliveries refer to the same day or some other day?

A Individual day. There is a pink slip for each day and they would be accumulated by us and then sent on to the Union News Company who would have to assemble them and make payments from the pink slips.

Q To whom did the New York Times send bills with respect to the Union News retail outlets?

A The New York Times' bill? Who they billed?

Q Yes.

A To the Union News Company on Varick Street.

Q Did The Times deliver directly to Union News, deliver the papers directly to Union News?

A To the direct area or West side area that I described to you and the wholesalers delivered in all other areasi

Q Were there Union newsstands located in areas covered by your wholesalers?

A Yes. That would be all the other areas than our west side.

Q The Times delivered the papers to the wholesalers at The Times' plant and they, in turn, redistributed the papers to the stands in their jurisdictions, is that

correct?

A That is correct.

THE COURT: We will recess until two o'clock.

MR. GREENFELD: If Mr. Roth and the Government have no opposition is it permissible for Mr. Veit to leave and not to have to return this afternoon?

THE COURT: Will anybody need Mr. Veit?

MR. ROSENBERG: No objection.

14 MR. ROTH: I don't think we will need him.

THE COURT: All right.

(Luncheon recess.)

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AFTERNOON SESSION

(2.00 p.m.)

N A T H A N G O L D S T E I N , resumed.

DIRECT EXAMINATION (Continued)

BY MR. ROSENBERG:

Q Let me draw your attention, once again, to your memorandum of April 21, 1961, Defendant's Exhibit A in evidence, on the first page you have written a table under the words "discounts and rebates".

For a series of dates beginning in 1950 and ending in 1959 there is listed an area and under the "area", country, price and their price and so on.

A Yes.

Q Looking at the first entry for the effective date 1/23/50, would that be January 23, 1950?

A That is correct.

Q The notation follows:

"Country, daily price $3.75."

A Per hundred copies.

Q Underneath that their price. What does that refer to?

A The Union News Company price of $3.50 per hundred copies.

Q The notation in the right-hand margin under

"Rebate remarks" reads in full:

"25 cents discount on daily only, their price $3.50 from 50 to 100-mile radius only."

A Yes.

Q Could you explain how the billing worked both for the Union newsstands and for the other country stands?

A Well, the wholesalers that serve the Union News Companies, the Union newsstands in this area would bill in accordance with our designated price and would be rebated the 25 cents per hundred discount.

Q Could you describe in a little more detail the mechanics of how the billing worked from the time when The Times prepared its bill through its payment by whoever paid it?

A The exact billing procedure I don't believe I can give you documentarily but I believe what did happen is that based on instructions from the circulation department as to this particular pricing for the Union News Company the accounting department would get a memorandum from the country distributors for the number of copies they served the Union News and seeking a refund or rebate of the adjusted price of 25 cents for those copies sold, not on unsold copies.

Q Speaking still of the period around 1950, this

first entry, was it the practice of the New York Times to negotiate the price at which the newspaper would be sold to its wholesalers? Did it negotiate this price with each of its wholesalers?

A In the country area that you speak of?

Q Yes.

A No, the price was never negotiated. Only expenses were negotiated, additionals beyond normal course, beyond routine delivery.

Q How was the price determined?

A Any time there was a price increase there would be a notification from the circulation department advising them of the reader price increase and would break it down for a share of that increase to both the wholesaler and the retailer.

Q Did your testimony, sir, that when the New York Times raised the cover price that appeared on the newspapers that at that time it would send out notifications to both its wholesalers and to the retail outlets of the various prices at which The Times would be sold to each of those sets of people?

A The notice to the reatilers would be concentrated in the 50-mile trading area. Beyond that we expected our country wholesalers to notify the retailers

as to what the new price structure was going to be.

Q The price was set by the New York Times?

A The suggested price.

Q In the case of the Union newsstands taking them first in the country area, the 50 to 100-mile region, how was the adjustment made in the billing? How did the billing reflect this 25-cent discount?

A I think that you notice in my legend of this that the daily, up until '57, maintained that one-quarter per cent per copy discount but the Sundays varied as the price increased.

How it was set, we tried to relate the prices that we had heretofore and tried to adjust it in some equitable manner as they continued.

Q Mr. Goldstein, whether The Times was sold through a wholesaler to its retail outlets or whether delivered directly to the retail outlets, isn't it a fact that the New York Times selected a suggested retail price for the paper?

A Yes, we did.

MR. ROTH: These are leading questions and the witness ought to testify himself.

THE COURT: That one is all right.

Q Is it also the case, sir, that whether the

papers were distributed through a wholesaler or directly to a retail outlet, the price that the retailer would pay to purchase the papers from his supplier was also suggested by the New York Times?

A It was suggested, yes.

Q During the period of 1950 to May of 1960, did The Times have a price allowance agreement, to the best of your recollection, with any other retail outlet, whether it was a multi-stand outlet or a single outlet aside from the Union News Company?

A I think I related prior to the lunch recess that we did have one with the Armstrong Company in Boston and the few home delivery dealers in Evanston, Illinois. There was a concession for the maintaining of the route.

Q If you know, sir, what was the consideration for these price allowances?

A The price allowance to Armstrong predates me in the department so I inherited that and carried on that price allowance.

Q Were you billed in the circulation department for any specific service or products for any of the stands whichreceived price allowances in this period?

A What services would you refer to?

Q Did the New York Times in the period up to

1960 receive bills or invoices from any of its retail outlets for services which would account for the price allowance?

A As a matter of fact, there were no bills. The billing understanding was made at the initial determination and the accounting department would bill in accordance with the instructions from the circulation department at those rates and wholesalers were so advised that this would be their billing and their billings would be adjusted.

Q Also in this period running through the early part of 1960 was it the part of the New York Times to print or cause to be printed posters which would advertise some feature to be shown in the papers?

A They were printed for the primary stands in the trading area and a limited number sent to the perimeter of the trading area to capture our audience.

Q Is it your recollection whether these posters were in that period of time sent to any Union newsstands?

A To my recollection, they were not.

Q What about to the independent stands?

A Independent stands they were. They would be placed inside the bundle of their particular that day shipment and, say, the post next day or post on Sunday for some story that we were going to run on the following

day or following week.

Q Did The Times during this period, again up to 1960, seek the permission of the retail outlets for posting these advertising placards?

A No.

Q Did The Times --

A This was as a customary practice in the trade of doing this.

Q Was it the customary practice in the trade for the New York Times to pay the newsstand outlet for the right to post promotional material at the stands?

A No.

Q Did there come a time in January of 1960 when you received a copy of a letter from the Union News Company referring to the price at which the New York Times would be sold at the Union newsstands?

A Well, I am confident I did get a copy of this letter from Mr. Strassman.

Q Mr. Goldstein, are you referring to Government's Exhibit 60-A for identification?

A Yes, a letter addressed to Amory Bradford, then business manager, informing us of this contract, his new labor contract, and the need for some financial relief for the sale of the newspapers.

THE COURT: What is the date of that letter?

MR. ROSENBERG: January 19, 1960, your Honor.

THE COURT: Have you marked this in this proceeding?

MR. ROSENBERG: It's been pre-marked but I will move its admission now.

THE COURT: Any objection?

MR. ROTH: No objection.

THE COURT: It will be received.

(Government's Exhibit 60-A was received in evidence.)

xx Q Do you remember having any conversations with Morris Strassman or any other officials at the Union News Company concerning the matters adverted to in the letter, Government's Exhibit 60-A?

A 13 years have elapsed and I have talked to Morris Strassman quite frequently. I am sure there was some communication that we had but recall it, I can't at the moment.

Q Do you recall whether the New York Times agreed to the proposal contained in that letter for an increase in the retail price of the New York Times at Union newsstands?

A That last memorandum I had, the legend, I don't

know if it included this. I think it stops at 59. I would say not.

Q Do you recall whether subsequent to the receipt of this letter which is dated January 19, 1960 there came a time when the New York Times was removed from some or all of the Union newsstands?

A That is correct.

Q Can you recall the circumstances of that removal?

THE COURT: Were they removed or hidden?

THE WITNESS: They weren't in their normal selling place.

Q When approximately did this occur?

A Could I refresh my memory with the legend, the one you had on our problem? I have a copy here.

This first took place in the country area, if I remember, the beginning or middle of March.

Q I call your attention to page 3 of Defendant's Exhibit A.

A Yes, may of 1960.

Q I ask you if that refreshes your recollection as to the time when the New York Times was taken off the Union newsstands and hidden beneath the counter?

A That is correct.

Q Was The Times restored to the Union News counters after the incidents?

A It was a 10-day situation.

Q After The Times was restored to the Union News counters, did you receive a call or inquiry from anyone at the Union News Company requesting a meeting with The Times?

A I can't recall factually but I am confident that the number of telephone conversations I had with Mr. Garfinkle that he asked for such a meeting and which was arranged at a luncheon which Mr. Veit attended and the others that were mentioned here this morning.

Q Did you call the meeting or did Mr. Garfinkle call the meeting?

A To recall the facts, I would say that Mr. Garfinkle, knowing him as I did, asked if we couldn't get tog e ther and discuss this.

Q Do you recall who was present? Let's first fix the time.

When did this meeting occur?

A July of 1960. I am not sure.

Q Can you recall who was present at the meeting?

THE COURT: Where was it?

THE WITNESS: The meeting was held at one of the

small executive dining rooms at the New York Times, 229 West43rd Street.

Q Do you recall who the participants were at the meeting?

A Mr. Garfinkle, Mr. Strassman, Ivan Veit and Bill Welkowitz of the Daily News and I am not sure in my mind if Pat Reynolds attended the meeting.

I usually had him along with me so he could sort of acquire the same knowledge that I acquired so he could discharge his duties.

Q Did Mr. Garfinkle express an interest in meeting any particular executives of the New York Times at this meeting?

A I know he wanted to meet my superior. After all he does make the final decision.

Q Who did he want to meet in particular?

A Mr. Veit.

Q Do you recall whether you invited Mr. Welkowitz to the meeting?

A I am very hazy on the circumstances of inviting Mr. Welkowitz. We had the circulators in New York, we had a camaraderie. There were seven of us in the city at that particular time, if not eight. I don't know whether The Mirror was still around. I am not sure in

my mind if Mr. Garfinkle suggested that Bill Welkowitz come along because we tried to do things very informally.

Q Was it the regular practice among the circulation managers or circulation directors of the New York City daily newspapers to meet from time to time?

A We had a group association among us for primarily social activity but we did have a serious objective and that was to try to continue the newsstands on the streets of New York. We met frequently with the Commissioner of Licenses, Commissioner Tyler.

Later on it was Commissioner Bess Myerson. We had a good relationship. But Mayor Wagner gave us the most help --

MR. ROTH: We are getting far afield here.

THE COURT: Yes, I think we are too.

What you say is that the newspapers had a common interest in keeping the newsstands going on?

THE WITNESS: Correct.

Q In your periodic meetings did you ever have conversations relating to the price at which the newspapers would be sold to the retail outlets?

A No.

Q Did you ever have conversations relating to the price at which the papers would be sold to the general

public?

A No.

Q Did you ever discuss techniques of promotion at the point of sales of the newspaper?

A Yes.

Q Could you state what the nature of those discussions were in your meetings with the other circulation directors?

A I took the initiative in the '50s of offering to paint newsstands and dress them up because they were ugly sights on the streets of New York and we offered to paint them and put our promotion on them.

When enough were painted with our promotion the other papers got interested and we developed a mutual slogan "Newspapers say it best".

That is as an outcome of taking the New York Times individual promotion and they shared in the repainting of the stands.

Q Were there any other promotional schemes or techniques which you and the other circulation managers discussed at your meetings?

A Other than the efforts to work closely with the License Commissioner to sort of encourage the opening of newsstands with the blind, the handicapped and other

than what the city charter called for.

Q In these meetings did you ever discuss the New York Times' relationship to the Union News Company?

A No.

Q To the best of your recollection, did any of the other circulation managers discuss the relationship between their papers and the Union News Company at these meetings?

A Nothing officially.

Q About h ow frequently up to July of 1960 had you met with Bill Welkowitz of The News?

A There would be social gatherings during the year where I would see him. The group itself I don't think met more than three, four, maybe five times a year at a luncheon and it was more social than anything else.

Q Had you ever met Morris Strassman before the July 1960 meeting?

A Yes, I met him shortly after I became circulation manager. I would meet him at public functions like the inner circle dinner and some benefit dinners where Mr. Garfinkle would have a table and I would be at the functions myself and get to see him.

Q I take it you also met Henry Garfinkle before the July 1960 meeting?

A Yes.

Q More than once?

A Quite frequently. I met him socially.

Q Can you recall the substance of the conversation at the New York Times in July of 1960?

A That was the luncheon you are referring to?

Q The luncheon meeting you had.

A Mr. Garfinkle outlined his problems, of course, of doing business and the profit of the individual products that he handled and sought some financial assistance in a manner that the New York Times could see its way to do something for him and, as a result, as Mr. Veit testified this morning, came out the use of the newsstand cards or, as Mr. Roth describes it, posters.

Q In the course of this meeting did you or any other representative of The Times, Mr. Veit or Mr. Reynolds, if he was there, mention any price, any dollar figure?

A No.

Q Did Mr. Garfinkle mention any price or dollar figure for the posters and placards?

A Not specifically as to the price but I suppose it was specifically as to the total dollars that he was receiving above the establ ished price to other retailers there. There was some relief that he needed.

Q In the course of the conversation at The

Times did Mr. Garfinkle inquire of you or Mr. Veit whether The Times had proportionately equal agreements for the display of posters and other retail outlets?

A No.

Q Did you or Mr. Veit mention anything abou agreements that The Times may have had with other retail outlets?

A No.

Q The subject never came up?

A No, I don't recall.

Q Did there come a time in approximately January of 1961 when you had a second meeting with representatives of the Union News Company concerning this proposal?

A That letter I sent Mr. Strassman reveals there must have been a second meeting but my memory doesn't serve me well at this moment to say there was that second meeting or who was there.

It does confirm that Mr. Veit must have been there because this was when we resolved the arrangement for the newsstand holders for the cards or posters.

Q Were you a party to any conversations between the July 1960 meeting at The Times and the January 1961 luncheon at which the poster proposal was discussed?

A I was at the original luncheon with Mr.

Garfinkle. There certainly must have been, if I had written a letter saying in accordance with this meeting we had at a latter date, but I am a little hazy as to what took place.

Q Do you recall whether there were any other meetings?

A Not officially other than those two or the second one which I am hazy about.

Q Do you recall whether you discussed this proposal with any of the other circulation directors of the other newspapers?

A I did not.

Q Do you recall whether you had any conversations either in person or over the telephone with any Union News officials concerning the details of the proposal?

A I am confident at that time that when we had agreed to what we were going to do before I sent the official notification to Mr. Strassman I must have talked to Mr. Garfinkle about it but I don't recall.

Q Did there come a time when you notified the Union News Company that the proposal had been accepted?

A Yes.

Q I show you what has been marked Government's

Exhibit 15 for identification and I ask you if you can identify that?

A I can. It's a letter I wrote on April 20, 1961 to Mr. Strassman to tell him we were ready to go through with the arrangement as we agreed on January 5 with he and Mr. Garfinkle. It reveals we must have had a luncheon within that period of time. I just don't recall it. I do recall the other luncheon.

Q Mr. Goldstein, does this letter accurately reflect the agreement that the New York Times reached with the Union News Company?

A For that period of time, yes.

MR. ROSENBERG: I offer in evidence Government's Exhibit 15.

MR. ROTH: No objection.

THE COURT: Received.

(Government's Exhibit 15 was received in evidence.)

xx

THE COURT: You said something about that period of time. This is all open-ended.

THE WITNESS: It began there and then there was a change later on.

THE COURT: I see. But this wasn't limited to anything. This would continue until there was some

change?

THE WITNESS: Correct.

Q Mr. Goldstein, shortly after you sent the letter of April 20, 1961 to Morris Strassman of the Union News Company did there come to your attention a bill or invoice from the Union News Company relating to the posters?

A That is correct.

Q I call your attention to Government's Exhibit 14 for identification and ask you if that is a copy of the first invoice received by the New York Times under the terms of the agreement you have just described?

A It is.

MR. ROSENBERG: The Government now offers Exhibit 14 in evidence.

MR. ROTH: No objectioni

THE COURT: Received.

(Government's Exhibit 14 was received in evidencce.)

Q Mr. Goldstein, I call your attention to the typewritten language on the invoice and ask you if you would read it, please.

A "Rental of space in newsstands for advertising signs at $2000 monthly."

MR. ROTH: The document speaks for itself. There is no reason to read it.

THE COURT: It isn't very long. I will let him read it.

A "1961, January, $2000; February, $2000."

Q This was a bill for the sign rental at Union newsstands, is that right?

A Correct.

Q Was there any other consideration by the payment of The Times of $2000 per month?

MR. ROTH: That is a conclusion and I object to it. There has been no testimony as to how this was developed.

THE COURT: I will sustain the objection to the question. The witness can answer that the purpose of the payment was for this agreement?

THE WITNESS: Correct.

Q Do you recall today whether The Times paid that bill, sir?

A I am confident that I approved it for payment through the controller's office and the payment is then with them.

Q Did these bills regularly come to you for approval?

A They did.

Q Then what happened to the bills?

A I approved them and they went on to the accounting department for payment.

Q These bills were wholly independent, were they not, of the bills the New York Times rendered to its distributors and wholesalers?

A Distinct.

MR. ROTH: I object. That is an irrelevant question.

THE COURT: I understand the point. This is a separate bill?

THE WITNESS: Yes, sir.

Q Mr. Goldstein, did there come a time when you prepared a memorandum for Mr. Veit summarizing the names and addresses of other newsstands with which the New York Times had poster display agreements?

A That is correct, sir.

Q Referring to Government's Exhibit 17 for identification, I ask you if that is a true copy of the memorandum you prepared for Mr. Veit?

A It is, sir.

Q Was that memorandum prepared in the regular course of your business?

A It was prepared at the insistence of Mr. Veit

as to what other outlets we have in the area to pay for newsstand displays, newsstand card displays or poster displays.

Q Was it part of your business to prepare such memoranda?

A They are my responsibility tc report on the activity that it had connected with it and the expense beyond budgetary.

THE COURT: What isthe date on that?

THE WITNESS: December 19, 1961.

MR. ROSENBERG: The Government offers Exhibit 17 for identification now.

MR. ROTH: Were these the only ones?

MR. ROSENBERG: He has not so testified. He testified this was a memorandum that he prepared.

MR. ROTH: If it's merely offered as a memorandum that he prepared --

THE COURT: Do you have any objection?

MR. ROTH: I object. I don't see the relevnacy of it.

THE COURT: These are stands other than Union News?

THE WITNESS: That is correct, those are independent ones.

MR. ROTH: I have no objection.

THE COURRT: Received.

(Government's Exhibit 17 was received in evidence.)

Q Mr. Goldstein, to the best of your recollection today, is that listing onthe first page of Government's Exhibit 17 an exhaustive listing of all of the newsstands at that time with which The Times had agreements for poster displays?

A At that time, correct, sir. That is in the metropolitan area.

Q In the metropolitan New York City area?

A Right.

Q Did there come a time in early 1962 when you prepared a memorandum for Mr. Veit summarizing a list of all newsstands at which displays were then made for the New York Times?

A Yes, I prepared that memorandum.

Q Is Government's Exhibit 18 for identification which you have before you, is that a copy of the memorandum which you prepared?

A It is.

Q Was that memorandum prepared at anyone's instance or suggestion?

A If I recollect, it was prepared as a result of our not seeing enough of the cards or posters displayed. I requested this of Mr. Strassman. He sent me a copy of the locations.

Q Did anyone in the New York Times ask you to prepare this memorandum?

A This came as a result of the inquiry as to where these cards were displayed.

Q Where did that inquiry come from?

A Possibly Mr. Veit.

THE COURT: You don't remember?

THE WITNESS: No, I don't, sir.

Q Did you prepare that memorandum in the regular course of your duties as a circulation director?

A It would be something I would be responsible for and I should prepare it. It sh ould have been initiated by me if that is what you are asking.

MR. ROSENBERG: The Government offers Exhibit 18 at this time.

MR. ROTH: I have no objection provided the record shows that of all the pages in the document the only one referring to the Union News is on the last page. It's the last sheet.

MR. ROSENBERG: I have no objection to that

proviso.

THE COURT: What is the date of that?

MR. ROSENBERG: January 26, 1962, your Honor.

(Government's Exhibit 18 was received in evidence.)

xx Q Mr. Goldstein, I ask you now to take a look at Government's Exhibit 18 and tell us whether, to the best of your recollection, that is a complete listing of all of the stands on which The Times had a right to post promotional materials in January of 1962?

A This is a list that was supplied by the Union News Company which I accepted to be correct and so reported it on to my management.

Q Would you look at the last page of that memorandum?

A Yes, sir.

Q Which states at the top "Memorandum from the circulation department".

A Correct.

Q And addressed to Mr. Reynolds.

Wh o is Mr. Reynolds?

A He was the circulation manager in the department.

Q He worked --

A Directly under me.

Q Is he alive today?

A He is deceased. This memorandum is signed by James Dolan who was then the city circulator.

Q To the best of your recollection, is this list on the last page of the memorandum, Government's Exhibit 18, a complete listing of the dealers within the metropolitan New York City area where you have installed metal card holders for the posting of promotional material?

A I accept this as correct from the source it came from.

Q This was prepared within your department at your request?

A Correct.

Q Did the circulation department of the New York Times take any steps to insure that the Union News Company was complying with the agreement?

THE COURT: I think that is an awful leading question.

MR. ROSENBERG: I will withdraw it.

Q Mr. Goldstein, to the best of your knowledge, were the posters displayed at the Union newsstands during the period when the agreement was in effect?

A We had our field staff check from time to time

and had reports that there was no display and in those instances where we found no display we so notified Mr. Strassman.

I think there is some material in evidence of the correspondence we had where I received from Mr. Strassman that he had sent notifications to his supervisors in the field that this was not being done, to take the necessary action to correct it.

THE COURT: Did you ever stop paying because of the non-displays?

THE WITNESS: I did not.

THE COURT: You continued to pay?

THE WITNESS: Yes.

Q Let me show you what has been marked Government's Exhibit 21 and ask you if you have seen that before?

A I have, sir.

Q Can you identify it?

A It's a letter to Mr. Morris Strassman notifying that our country department, the country area, has listed a number of cities that the material is not being displayed.

MR. ROTH: What is the date of that?

Q Can you indicate the date and authorship of